

The Darrow Case

Argument for Defendant

BY

JUDGE O. W. POWERS

of SALT LAKE CITY

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PRESS OF
THE F. W. GARDINER CO.
SALT LAKE

PREFACE.

The following pages contain the argument of Judge O. W. Powers, made to the jury in Extra Sessions Department 4, Superior Court, Los Angeles County, California, Judge W. M. Conley of Madera county presiding, on behalf of Clarence S Darrow, charged with bribery, in connection with the celebrated McNamara murder trial.

Judge Powers is the senior member of the law firms of Powers, Marioneaux, Stott & McKinney of Salt Lake City, Utah, and Powers, Marioneaux & Lady, of Los Angeles.

Argument of Judge O. W. Powers

Wednesday, March 5, 1913; 9 A. M.

THE COURT: You may proceed, Judge.

MR. POWERS: IF YOUR HONOR PLEASE, AND GENTLEMEN OF THE JURY: May I make a personal reference at the outset of my argument? I want to state that I shall not speak to you exactly as a stranger from a sister state; for before I received the request from my distinguished client to assist in his defense, I had made preparations to come among you and open an office, and help to pay the taxes of your county. Therefore I am here as a resident, as well as a lawyer whose home is in another city; and I, therefore, can speak to you with less hesitation. I mention this because sometimes that which is said by one who has no interest connected with our own, has not as much weight.

OUR FORM OF GOVERNMENT.

You are performing a great duty, and I am here to perform a duty, because in the determination of the questions that arise in court, not only must we have the judge and the jury, under our system of government, but the defendant in a case may speak for himself and he may have the man of his choice to speak for him. That is a part of our form of government. No higher duty devolves upon the citizen than jury duty—burdensome at times, it is true, but it is a duty that men perform patriotically, just as they go forth when their nation is attacked by a foreign foe, or disturbances arise within our midst, in order that the government and its principles may be protected.

This is a great and a magnificent government. Only yesterday as we were busy with this case, there was a complete change of administration. We did not feel it; we scarcely appreciated it. We knew that under our Constitution and laws such was the fact. We had passed through a heated political campaign, and men upon different sides of public questions had argued and discussed and reasoned, and had supported various candidates; but after the vote had been counted, the people yielded, and the man inaugurated yesterday is no longer the leader of a party or a faction, but he is the president of all. How different from that concerning which we read of a sister so-called republic—the Republic of Mexico.

The strength of our government lies in our obedience to law, and in our love of justice, and of right; and in the determination in the hearts of all men that everyone shall have an equal chance, and that no unfairness shall be done to even the meanest individual. And so, in our courts, in the trial of cases, the scales of justice are made level.

I would be unworthy of my position as an attorney at this bar if I did not yield in consideration for the able and fair manner in which His Honor has presided through this long case, with its many angles, and the intense interest which naturally has resulted therefrom. And so, too, we appreciate the patience with which you have listened to the evidence; the care you have exhibited, to try and arrive at the truth. I can say that we have had, thus far, a fair trial.

THE CASE AND THE QUESTION AT ISSUE.

This is a criminal case. It is a case where the result is fraught with serious consequences to the defendant. The question that is before you is as to whether he has so conducted himself that under the law his liberty shall be taken from him—a serious question; for, next

to life, there stands liberty, the most precious thing. This is an important case; and I beg of you that you try this case upon the issues that are framed, not upon the collateral matters which have been introduced for limited purposes, but try the case upon the question that the Court will submit to you, and that question is, did Clarence Darrow attempt to bribe or did he bribe Robert F. Bain?

For one hour and a half yesterday I listened—one hour and fifty minutes, to be exact—to my distinguished friend who preceded me, and not until one hour and fifty minutes had elapsed was the name of Bain mentioned. We must not forget the case that we are trying. I refer to this because, as I shall show you before I have done, the manner in which this case has been tried by the prosecution has been manifestly unfair. An effort has been to becloud the issue. The struggle has been to introduce irrelevant matters; to take your minds from the thing which you should decide, and to endeavor to secure a verdict by appealing to your passions and to your prejudices. This charge being a different charge than the one concerning the man Lockwood, and upon which Mr. Darrow was tried and found not guilty, the prosecution is entitled to try this case, and yet the evidence discloses that there has been scarcely a change in the testimony of this case from what it was in the Lockwood case, when there was rendered a verdict of "Not guilty" by a jury of twelve honest men of this county. All the testimony of the Lockwood case has again been introduced before this jury and its effect cannot be otherwise than prejudicial to my client.

UNFAIR TO TWICE TRY THE DEFENDANT.

It appears from the evidence that the testimony of the Bains was introduced, and the testimony of Diekelman and Biddinger and others was introduced in the Lockwood case for a limited purpose in that case, to throw light upon the question as to whether Clarence Darrow was guilty of bribing or attempting to bribe the man Lockwood; and in this case, where the charge is of attempting to bribe or bribing the man Bain, there has been introduced the same testimony to throw light upon this case, notwithstanding the fact that staring you in the face is a verdict of not guilty. And while technically they have the right to try this case, because it is a different charge and a different date, nevertheless, the former acquittal was just as much an acquittal of all the matters concerned in this case as if this case involved the identical time and the identical man whom it was alleged was bribed in the Lockwood case. We cannot, under the forms of the law, plead former acquittal or once in jeopardy, because of this technical distinction, and yet the thing stares us in the face that Darrow has been acquitted upon this very testimony now before us. A verdict of "not guilty" is in this nation considered sacred. The result of the former trial is to be considered in this case for we have had the same witnesses here. We have tried this matter, as I say, over again because it is technically a different charge the effort is being made to convict Mr. Darrow by using the very testimony upon which he was acquitted. Is that fair? Can it be that in the interest of justice it was necessary to try Mr. Darrow again? Is there not some other reason back of it? I shall attempt to show you before I have done that there is. And I beg of you, gentlemen of the jury, to follow me in this argument because I shall hug closely to the facts. I shall attempt no flights of oratory. I shall try to be an aid to you. I may be tedious at times; but I ask you that you pardon me if I am, because I have a man's liberty in my charge. So, at the outset consider that this testimony has all been gone over in the court once before; and as was so aptly said by Mr. Darrow in his opening statement, "A tribe of savages would not require a

man to twice run the gauntlet." Twice it has been required here in Los Angeles of this defendant. Is it fair? Is it right? Is it honorable? Is it in accordance with the principles of our form of government? And then, consider the opening argument—if it may be so designated—an argument wherein counsel talked of everything but the matter on trial. However, I know that there never was a lawyer who sent a young man out from his office into the world to try cases, but admonished him saying: "Now, my son, whenever you have a bad case, when you know that it is impossible to win upon the facts, abuse the other side and make a great noise." Sometimes you can obtain a verdict in that way. Am I not justified in this remark? Why, the defendant has been called "a jury-briber;" "a witness-briber;" "a man who has the burglar's tools with him;" a "moral idiot;" a "thick skull;" "an unintelligent person;" a "criminal by nature;" a "criminal by practice." He has been compared to the fox; and when that was done I bethought me if we were to make a zoological garden of this court room what animal would my rotund friend remind you of as he stood here and pawed the earth and lashed himself with a metaphorical tail? He charges that there was an immense corruption fund, raised to defend the McNamaras; he magnified it. If I recall the testimony it was to the effect that there were about 2,000,000 men connected with the labor unions in the country, and there was an assessment of twenty-five cents each. So, assuming that they all paid, which they did not, according to my method of figuring, there would be about \$500,000. My friend upon the other side magnifies it to \$800,000. He is great, I concede, at figures. He is equal to the professor who, going down into the cellar of the college one day, fell into a well that was lined with brick. For some time he didn't know how he was going to get out of there, until he bethought him that he had a piece of chalk in his pocket, and that he might figure himself out by algebra. And so he let Y equal the depth of the well and X equal the manner in which he was going to get out, and he did actually figure himself out of that well. The gentleman who has preceded me has figured out the verdict of guilty in theory, but it is not based upon the evidence in this case.

UNFAIRNESS OF THE PROSECUTION.

The next thing that distressed Judge Gray was, that Mr. Darrow is not a good business man. He did not make a bargain, he says, with Franklin. He allowed everything to be open, and the question as to compensation to be understood in the future. That doesn't prove him to be a criminal nor that he had anything to do with bribing Robert Bain. It might not be the best thing for him to do. Nevertheless, at the end of the argument Judge Gray insisted that Clarence Darrow is a good business man. I never could understand a man that blew hot and blew cold. And still, if you will recall it, I am in substance stating the result of his argument correctly. Then, a great deal of time—in fact, nearly all of the time that was devoted to the testimony in this case—was devoted to the testimony of Diekelman and McManigal and Biddinger. Oh, how Judge Gray glorified Biddinger, the Burns detective! He stood here and he plucked feathers from the air and he stuck them on Biddinger's shoulder blades and made of him an angel, so that William J. Burns himself never would have recognized him. Burns is not in the habit of employing angels to do his work. As I understand it, angels are not spies. Angels do not follow the de-

tective profession. Angels are not members of the knot-hole brigade; angels do not have black feathers. Yet, said Gray, "There is Biddinger, the honest witness," "the finest witness that I ever saw upon the witness stand." Where in the world has my friend practiced law? Where has he tried his cases, if he has discovered in Biddinger the greatest and most honest witness that he has ever saw upon the witness stand? Was Biddinger fair? You remember one thing that he volunteered that showed his viciousness and venom, and it destroyed the effect that his testimony might have had. It was that remark that he interjected from the witness stand, "I was trying to find out how crooked you were"—referring to Mr. Darrow. An honest man would not want to prejudice a jury by a volunteer declaration of that kind. He would endeavor to be fair in his statements, that no injustice be done. But, in the opinion of Judge Gray, Biddinger was the greatest witness that ever went on the witness stand. But what was he doing, and what was Burns doing, according to Judge Gray? Why, he says they were protecting their witnesses from the eyes of Clarence Darrow, who, he says, if he got his eyes upon them—"those fox-like eyes"—he could induce them to do whatever he wanted them to do. I hope Judge Gray will keep out of range of those eyes if that is true. He said it reminded him of a story—not a story—but reminded him of a fact that in a Missouri city, where a woman heard that Brigham Young had come to town, she immediately proceeded to take care of and hide her girls, that they might not be taken away. Now, I don't know whether Judge Gray intended to compare Burns to Brigham Young, or not; or whether it was Biddinger that he thought was like Brigham Young, but I say that Brigham Young was a better man than these men and there is no comparison between them; and when Judge Gray compares those truth-defying witnesses to a mother looking after her children, it is simply ridiculous. Who ever heard of a detective, whose business it is to spy, to inform, by crooked ways to seek evidence, and whose very business depends upon his getting the evidence, whether it is true or false—who ever heard of such a man being compared to a mother?

THE UNFAIR MANNER OF TRIAL.

I think I have referred sufficiently to the argument, if it may be termed an argument; if vituperation may be called logic; if denunciation of the defendant may be called adherence to testimony; if appeal to men's prejudices, and an effort to induce them to overlook the real issue in the case, and render a verdict that would be unjust may be called argument. It was a part of the unfair methods that have been pursued in this trial. No sooner did the cross-examination of Franklin begin than objections were fired in volleys and platoons; objection after objection; objections after the Court had ruled; arguments after the Judge had given his decision—everything was done to break up, so far as possible, the cross-examination then being made of that man; and he was entitled under the law to be cross-examined most severely, for he occupies a position that men naturally feel renders his testimony suspicious—he is a self-confessed criminal. His testimony must be corroborated before it can be received. And the efforts being made, as I have shown, through the argument of counsel, not to try Mr. Darrow on the question here at issue, and if not possible to convict to at least break him—that is the effort—if they cannot convict him, then they desire to blacken his character as much as possible.

WHY DESIRE TO CRUSH DARROW?

Is it done because they believe he bribed jurors? No. Is it done because they believe in their heart that he is guilty? No! Then, why is it done? Because he must be punished; he must be followed; he

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must be crushed. He has dared to defend labor; he has stood for the weak and the oppressed. Why should he be followed and crushed? Why should Darrow be followed and crushed when Bain goes free? Why should Darrow be followed and crushed when Mrs. Bain goes free? Why should Darrow be followed and crushed when White goes free? Why should Darrow be followed and crushed when Franklin goes free? Nay, more, why should he be followed and crushed when Franklin, coming into court with hands sticky with bribes, with a tongue festering with lies, bears aloft a certificate of good character through his declaration that since his arrest he has been employed in personal matters by the District Attorney of this county? That is a significant fact, because if Mr. Fredericks as claimed by the counsel that preceded me, is the "greatest district attorney in the entire United States," do you believe that if he thought that Franklin was guilty, actually guilty, that he would employ him to do his work; that he would make of him his servant? Why should Darrow be followed and crushed when Lockwood is rewarded and draws pay, as he testified, from the county, while he is assisting in this prosecution? Nay, more, why should this man be followed and crushed when Harrington, the scarecrow lawyer from Chicago, comes here and is rewarded, and expects to be rewarded, for his treachery? Treachery as perfidious as that of Judas when he betrayed the Master. It seemed to me when that man testified on the stand, and there was developed his conduct towards this defendant and family that if it be true, as some men believe, that at one time all men were animals, the man Harrington must have crawled upon his belly, lapped the dust of the earth and hissed at the passersby, as he hid under a bush.

HARRINGTON, THE TRAITOR.

Am I not entitled to say that? Before I have done, I will show you by the evidence in this case the perfidious character of this man Harrington. He slept under Mr. Darrow's roof. He broke bread at his table. He sat by the fireside with the wife; he accepted employment from Mr. Darrow, and all the time he was aiding those who seek to crush Darrow. I don't know how you feel about it, but it does not seem to me that honest men can believe such a man as that under oath. He is a despicable character; and he scarcely can be described.

He testified that between the 20th and 30th days of September, 1911, when upon the porch of Mr. Darrow's house, that Mr. Darrow drew from his pocket and displayed, "like a buffoon," as he said, a roll of bills which he swears Mr. Darrow said was \$10,000; and remarked if he could get a couple of the jurors, the boys never would be convicted. This story is so improbable that it should require no denial, but, having been denied by Mr. Darrow it should be considered out of the case. Harrington belongs to the same brand of angels as Biddinger, and those angels have not white feathers.

Harrington went from Mr. Darrow's fireside with the purpose in mind of entrapping him. He left the wife with the fixed thought in mind that he would induce Mr. Darrow to talk where there would be witnesses to hear and testify. He proposed to convict his friend. He admitted that when he was in Chicago before coming here he consulted with the investigator of the National Erectors' Association, an arm of the Steel Trust, with the United States District Attorney, and with a man whose name he did not know; and in substance he says that it was agreed that he should come here and endeavor to entrap Darrow. So he went to the Hayward hotel and registered under a false name. He lied when he signed the name. He procured a room and notified the United States District Attorney that the trap was set. He was

informed that a dictagraph had been placed in the room—that instrument of the devil, that can be placed out of sight and which will convey words uttered in the room to people far beyond. It can be put in your house or in my house, and in your room, so that everything you say can be heard by others and you not know. It destroys the privacy of humanity. Harrington knew it was in the room, and he saw it there, and he then informed the District Attorney that he was ready. Five times he says that he lured Mr. Darrow into that room between the 14th and 19th day of February, 1912; but he does not testify to a single incriminating word. The District Attorney was notified that the dictagraph was there; it was placed there for a purpose, and he was notified of the purpose; and the purpose for which it was placed there was that it might convey to someone located elsewhere words Mr. Darrow uttered, hoping thereby to incriminate him. The District Attorney was notified so that his agents might listen to what was said; yet neither Harrington nor anyone else comes into court and utters one incriminating word uttered by Darrow. And remember that at that time Darrow had confidence in Harrington, and if he had been a guilty man, as they are endeavoring to show, something would have been procured by those interviews. Can you believe, when they rake and scrape the country as they have for every bit of evidence in order to crush this man, and then fail to introduce what was said there in that room—can you believe this defendant is a guilty man? It was not necessary for us to ask what was said; but we asked about it—I asked Harrington on cross-examination concerning his luring Mr. Darrow into that room. It was then competent for the prosecution to ask him what was said there. But they didn't do it; and having the opportunity and not seizing it is a confession that not a single word was uttered at that time but what might be uttered before all the world. Harrington is the man the prosecution is depending upon. Take the prop out of the case that consists of Harrington, and you are not going to find much of a case for the prosecution left. They are depending upon him for corroborating circumstances. Can you believe such a man as that? Would you hang a dog upon such testimony as was produced from the man Harrington? Does he commend himself to you? Does it seem to you that a man that would do what he did would give true testimony if his interest was the other way? No, gentlemen of the jury, a case that must rely upon testimony from a man so besmirched, from a man so treacherous, should fall to the ground.

WHY BELIEVE THE TRAITOR?

Why are you asked to believe Harrington? Because of the necessities of the case. Why does the District Attorney's office produce such a witness? Because the people have no one else. Why are they prosecuting Mr. Darrow a second time? From whence comes the strong hand that apparently has the District Attorney's office by the throat? I shall call your attention before I am done, to significant facts—facts borne out by the testimony—facts sworn to here upon the witness stand, that indicate, as Franklin said soon after he was employed, "There are angles to this case that the lawyers know nothing about." Who compels this prosecution? Not the City of Los Angeles; not the great State of California—a State that is filled with a liberty-loving, justice-loving fair-minded people. Do you believe that this city, which is the marvel of the century, growing here beneath this southern sun day after day so rapidly that he who leaves it for a month comes back and is astounded—do you believe that a people filled with such ideas of progress, who are essentially an American people, believing in American ideas, desire that an innocent man be followed until he shall be com-

pletely crushed and broken? California is a great State; California has a great people; California is in the very van of progress; and the City of Los Angeles is the fairest gem upon her breast. Can you tell what the years hold in their hands for this great city? I wish that I might lift the drop-curtain of the future and let you see, as your children, and their children's children shall see when this city shall be a busy, bustling, intelligent mass of people from the mountains to the sea. Year after year the people of the East are learning more and more of its opportunities, and here they come to help, and here they come to live, and here is to be one of the greatest cities known in our history. A city with such a future, filled with people who conceive, as they have conceived, who institute and carry out, as they have carried out, an engineering project greater for this municipality than the building of the Panama Canal by the Government of the United States, bringing water for the people hundreds of miles to irrigate the arid valleys—that kind of people is a just people, who believe in fair play. They are not insisting that Darrow shall be sent to the penitentiary; they are not employing counsel to blacken this man. They believe in fair play.

THE QUESTION AT ISSUE.

Now, let us consider this charge: Did Mr. Darrow bribe, or cause to be bribed, Robert Bain? First, how must it be proved? There are certain rules of law that seem to have been forgotten by the prosecution. The matter of the presumption of innocence, of which you have heard is one. Our race has always been careful of men's lives and their liberties. Our race has considered that it is better that ninety-nine guilty men escape than that one innocent man be punished. Our race has been an eminently fair race. It does not, like Mexico, compel a man to prove that he is not guilty. It does not seize him, and when taking him to a jail, kill him and declare that he was trying to escape; but it insists that all the forms of law shall be obeyed before a man shall be convicted.

First of all they presume him to be innocent. Why? Because the great mass of people are innocent; the criminal is the exception. The honest, law-abiding man is the man that belongs to the mass of citizens. Knowing that to be a fact, every man who is charged with crime is presumed to be innocent. What does that mean? It means that notwithstanding the fact that one may be indicted or informed against, or complained against, and charged with crime, he is to be considered by the jury when they start upon the trial of the case, as an innocent man; and the jury looking at him must feel, "That man sitting there is an innocent man," and they must say to the prosecution, "Now, what have you to declare against this man?" The defendant does not have to open his mouth unless he chooses, and the prosecution must proceed and bring in the sworn evidence. And to what extent? Not evidence that shall preponderate in favor of the prosecution, as in a civil case. In a civil case all that the plaintiff is compelled to do is to produce sufficient evidence to preponderate slightly in his favor. But in a criminal case the law is so careful of human life and human liberty, that the evidence must be sufficient to destroy every reasonable doubt. Our law says no man can be convicted so long as one man of the twelve on the jury has a reasonable doubt as to the man's guilt.

THE TESTIMONY OF THE PROSECUTION.

Let us look to the nature of the testimony that has been introduced to prove Mr. Darrow guilty beyond a reasonable doubt. Let us consider it generally in the first instance. Of course, Mr. Bain and Mrs.

Bain do not prove anything against Mr. Darrow—not a thing. It is not necessary to discuss their testimony at length, because we can concede everything that they say to be true; for in no way is Mr. Darrow connected with these people, except through the testimony of Franklin, and he is not corroborated. I will make that plainer later on.

So we start first with Franklin, who is a self-confessed criminal—conceded in the argument of the distinguished gentleman that preceded me, of being a jury-briber. We unite with him in his description of Franklin. According to Franklin's own testimony, if any crime was committed, he is an accomplice. Being an accomplice, as I shall show you, you cannot convict upon his testimony alone. There must be other testimony, that, independent of his testimony—independent of it, mind you, his testimony being wiped out—tends directly to connect the defendant with the crime. So we have Franklin, the informer and self-confessed criminal. We have Harrington, the spy and traitor—those are the two principal witnesses for the prosecution. Their testimony, speaking of it generally, is not the kind of testimony that commends itself to honest men.

Again, we find that the issues in this case are clouded; that the real question has not been discussed, and probably will not be discussed at length; for there is no proof to sustain it, and consequently counsel are compelled to discuss collateral matters, which the Court told you were introduced for a limited purpose; and in his charge His Honor will tell you the purpose, and how far you can consider that testimony. I have mentioned the name of Franklin. Who is he? He makes the charge, and as I have said first of all if the offense was committed, he is an accomplice, and it is provided by our code with regard to the testimony of an accomplice, that a conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

So, I was right in telling you that the Bain testimony had no weight, for it simply tends to show the commission of the offense and the circumstances thereof. It does not tend in any degree to connect Mr. Darrow with the offence which Franklin confesses. You saw Franklin on the stand. You watched him closely. You observed his anxiety; striving all the while to inject something into the testimony that would injure Mr. Darrow, just as Biddinger did. He was not satisfied when the Court would admonish him. He would proceed to admonish the Court. He sat there with his little basilisk eyes twinkling, watching every question that was put, seeking to aid the prosecution all he could. Then he planted himself down in the corner of the court room where he would be at hand to give what aid he could in the endeavor to crush Mr. Darrow. He tells you upon the witness stand that he proposed to destroy his friend Lockwood. Mind you, Lockwood and Franklin had been brother officers; they had been associated intimately; they were friends; and yet, this man, in order to save himself, when he thought that he was about to be arrested, said that he was going to seize Lockwood, whom he had attempted to bribe, and turn him over to a traffic policeman and charge him with soliciting a bribe. As he said to one of the witnesses, "I will slip it to someone else." The thought came into his mind as quick as a flash, "I will turn Lockwood over to the

traffic police; I will charge him with having sought a bribe from me." That kind of man, who will sacrifice a friend, a brother officer, would sacrifice any one to save himself. He is shifty. He is a man of whom Mr. Browne, the detective, said in talking to Darrow, "You ought to have known better than to have employed such a man as that—drunk all the time." Browne's testimony is important in this case, and it is vouched for by counsel for the prosecution. He is declared to be an honorable and high-minded man. I am not going to find fault with his testimony. I take it that he stated the conversations that he heard as near as he can remember them; and he knew what Franklin was. He says, "You ought to have known better than to have selected such a man." There is the accuser; there is the man whose testimony you must believe in preference to a cloud of witnesses; a shifty man; one willing to "slip it to somebody else;" one willing to have a friend arrested and to make a false charge against him. You must believe that man, a detective by profession, a spy, an informer who lived by his wits, as against a cloud of witnesses. That is the kind of testimony that is introduced here.

WHO IS CLARENCE DARROW?

Who is he charging with crime? Who is Darrow? It appears here that he is a lawyer by profession; and, if I may say it, as a member of that profession, there is no calling more distinguished or more honorable. People in a joking way, of course, charge that lawyers cannot be trusted; yet, there is no class of men that is trusted more than the lawyer is trusted. You trust the lawyer with your secrets. You trust the lawyer with your life. You trust the lawyer with your liberty. You trust the lawyer with your money. You trust him as you do not trust a bank. There is not a man on the jury, if it became necessary for him to make a deposit with a lawyer of thousands of dollars, would ask of him a bond, and it is the only profession but what you would require some security. Through all the history of the profession the men that have gone wrong are few. Here and there some weak man has fallen by the wayside and has done that which is wrong; but the great men of the profession are honorable men. They have to be. Like Caesar's wife, they have to be above suspicion, or else the people will not trust them with their business. Mr. Darrow was a lawyer, and a trained lawyer, and one of the first things that lawyers are taught is to obey the law, to reverence the law. When mobs seize our cities, and passion rages, and men tear down the streets to destroy property, what men stand up and demand that they must obey the law? Time and time again members of my profession have faced mobs and advised them to be lawful, to be law-abiding; and that was taught Mr. Darrow from the very first time that he first entered a law office as a student. It became a part of a man's nature. A lawyer of his age and standing does not go wrong suddenly. And here he is charged not only by Franklin, but he is charged by other witnesses equally disreputable. I shall compare them with the witnesses for the defense later, man by man. I shall ask you which is the more worthy of belief, these witnesses which the prosecution introduced to testify against Mr. Darrow, many of them testifying for immunity, all of them shifty, all of them partisan, all of them striving to injure this man, or the clean, high-minded men and witnesses who testify for the defendant. The defendant is a man of high character, of the very highest character—he is not an ordinary man. Look into his face and you will say that he is a kindly man. If not, why has he devoted his life to the weak and to the oppressed? He is not a criminal. His impulses are right. You have watched him in this court room. You have watched his conduct as a

lawyer, and he has disassociated himself from Mr. Darrow, the defendant, and conducted the case with marked ability. He has been fair towards the witnesses, ready to yield to the rulings of the Court, and always keeping within his place as an attorney. He is a man of the very highest character. He must have impressed you when he sat upon the witness stand. And there is a value to character. The life that is well lived, comes to a man's defense in his hour of trial. The man who has so conducted himself that he has received the confidence of his fellowmen, who has so conducted himself that in the community where he has lived he is recognized as an honest law-abiding man, receives his reward when he is brought into court; for that character stands for him as a witness, stands as a wall that repels the assaults of those who falsify. I said to you that Darrow's character was of the highest kind, and it is improbable that one of such high character, as I shall show you Mr. Darrow has earned, should suddenly become a criminal and commit crime.

DARROW'S HIGH CHARACTER.

The great City of Chicago that originally set the pace for Los Angeles and grew so marvelously that it become one of the great cities of the world—the great City of Chicago speaks for him and tells you who he is. He puts his character in evidence. He called the people of Chicago to declare to a jury of Los Angeles county how Mr. Darrow is considered at home; what was his worth; how he lived; what was his reputation. And the city spoke through its most distinguished men, and they said to you unanimously, bankers, lawyers, preachers, priests, judges, business men—"Clarence Darrow has the very highest character." And not only has he that character in the City of Chicago, but Senator Mason, who disagrees with him politically, said that Darrow's reputation extended through the great State of Illinois. Let me call the roll, because I am going to sustain every point I make by sworn testimony. Let me direct your attention to those who speak for this man:

Ex-United States Senator William E. Mason; ex-United States Senator Albert J. Hopkins, both Republicans—Mr. Darrow a Democrat, as they state—opposed to him politically, declare him to be a man of the very highest character, and this is sustained by Carter Harrison, Mayor of Chicago five terms; son of the great Carter Harrison, who was Mayor of Chicago for five terms, a distinguished family, a distinguished man. Judge Simeon P. Shope, who knew Lincoln when he was alive, acquainted from one end of the State of Illinois to the other. Hempstead Washburn, ex-Mayor of Chicago. Frank J. Loesch, ex-President of the Bar Association. A. N. Waterman, ex-Judge of the Superior Court. John J. Healy, former State Attorney. E. A. Bancroft, Attorney for the Harvester Company. That is not a labor organization, according to the farmer's union. Some of them call it a trust; and he was formerly president of the City and State Bar Association. William H. Barnum, ex-Judge of the Superior Court. Harry Olsen, Chief Justice of the Municipal Court. John E. W. Wayman, State's Attorney—the same as the District Attorney. Alexander Chytrous, Judge of the Superior Court. John Gibbons, Judge of the Circuit Court. William S. Forrest, distinguished lawyer. Orrin N. Carter, Chief Justice of the Superior Court. John S. Miller, former corporation counsel. John J. Herrick, prominent attorney. Edgar Osgood Brown, Judge of the Appellate Court. Marcus A. Cavanaugh, Judge of the Superior Court. Burton Hanson, general counsel for the Chicago, Milwaukee and St. Paul Railroad. Charles S. Cutting, Judge of the Probate Court. Thomas C. Windez, Judge of the Appellate Court. John E. Owens, Judge of the County Court. George Kersen, Judge of the Superior Court. William McEwan, ex-Judge of the Circuit Court.

Arthur H. Chetlain, ex-Judge of the Superior Court. K. Scanlan, Judge of the Circuit Court. Fred A. Busse, ex-Mayor. George A. Dupey, ex-Judge of the Circuit Court. J. L. Jones, Unitarian minister. James Hamilton Lewis, ex-Congressman-at-Large, and who is being voted, according to telegrams from day to day, by the Illinois Legislature for United States Senator at the present time. Edgar V. Tolman, ex-President Bar Association. Jesse A. Baldwin, Judge of the Circuit Court. W. W. Gurley, attorney for the street railway companies. Theodore Bretano, counsel for the street railway companies. Francis S. Peabody, President of the Peabody Coal Company. Charles A. McDonald, Judge of the Circuit Court. William H. McSorley, Judge of the Superior Court. Richard E. Burk, Judge of the Circuit Court. William E. Dever, Judge of the Superior Court. Albert C. Barnes, Judge of the Superior Court. John C. Gillan, Catholic priest.

GOOD CHARACTER A WITNESS FOR DEFENDANT.

Verily a cloud of witnesses speaking as one man in behalf of Clarence Darrow. It is important for you to consider their testimony, for this man is substantially a stranger in this community, although he has lived here since he first came to take part in the McNamara trial. It is well that you know what kind of a man you are trying. It is important that you ascertain how he is considered by his neighbors. When you consider the testimony—the unanimous testimony of this cloud of witnesses, can you say that a man who has so lived in the great City of Chicago, that notwithstanding the fact that he had there defended labor organizations and that he there defended the weak, comes here now vouched for by corporation counsel, by priest, by ministers, by men of the kind who have testified for him, would suddenly become a criminal? He has lived too long to do it. He has reached that time of life when men are stable; the character is formed. He must have lived a good life at Chicago to receive such commendation as he has received. And mind you, while the prosecution cannot attack a man's character unless he puts it in evidence himself, when he puts witnesses on the stand, as Mr. Darrow put on a cloud of witnesses to testify to his character, then the prosecution, if it can find anything against him, has a right to show that his character is bad. They didn't do it. They couldn't do it; and those men testify that notwithstanding he has been indicted here in Los Angeles that his character is still good where the people best know him. Wouldn't you prefer to take the word of such men as those who have known him from day to day, who have walked the streets with him, who have seen him in the court, who know about his daily life, than the suggestions of paid counsel who comes here for the purpose of abusing him and endeavoring to blacken his name?

MR. DARROW. Good character was stipulated.

MR. POWERS. Yes; I ought not to forget that. Counsel stipulated that they conceded that Mr. Darrow was a man of good character and high character; and that reminds me that whenever the prosecution could not dispute a thing they immediately hurried to stipulate in order to do away with the effect of sworn testimony if possible, and weaken this man's case just as much as they could. They stipulated that he had a good character. And all these men at Chicago as one man, their voices all united in thunderous tones, speak in favor of Clarence Darrow, and it shows the utter falsity of the testimony of the man Franklin. You have here a man that a whole city speaks for; you have here a man that has so lived that no one in the community could be found to speak against him; and you must believe this informer, this detective, this self-confessed criminal, rather than this man of high character in order to convict. If there was not anything else but the testimony of character, it would be sufficient to clear Mr. Darrow. Good character

in and of itself is often sufficient to raise a reasonable doubt. You read in the paper in the morning that some man is charged with crime. You say, "I don't believe it." Why? Because you know the man. Not only do you know him, you know how he has lived; you know his character. You say, "I will not believe it." And if the witnesses that are brought against him are of the character of Franklin you are stronger than ever in your disbelief. You read of another man having committed a crime, and as soon as you read it you say, "I have no doubt but what it is true." Why? Because you know the kind of life that man has lived; you know he has been a criminal or a crook; you know his life has been shady; you know he has not a good reputation. As I have said, character is of the very highest value in a criminal case, and when a man has such a character as Clarence Darrow he cannot and will not be sent to the penitentiary upon the testimony of such a man as Franklin.

(Recess.)

(AFTER RECESS.)

THE WITNESSES FOR THE PROSECUTION CONSIDERED.

MR. POWERS. (Continuing.)

Looking over the record, gentlemen of the jury, I find in one matter I am in error, which I desire to correct, because it will be my effort to keep within the record. I stated to you that it was stipulated by counsel for the prosecution that Mr. Darrow's character was as I have stated it, but that is not exactly correct—although that inference might be drawn from the record. We read, as you will remember, the testimony of five of the character witnesses, and then it was agreed that the other witnesses' names and their business might be read who testified to Mr. Darrow's good character, and the court at the time said that it was not necessary to introduce the testimony of all the witnesses; and Mr. Ford said that "His reputation will not be attacked." That was the language Mr. Ford used instead of stipulating, but it amounts to the same thing. At the same time, I did not want to state it thus broadly when I found that it was limited somewhat by language that he used.

Now, in order to discuss properly the question we have before us, did Clarence Darrow bribe Robert Bain? It becomes necessary for me to take up at the inception more particularly than I have heretofore the testimony of the principal witnesses that it is claimed sustain that issue. I have referred to Harrington and I have referred to his character. He is one of people's important witnesses, because if he is to be believed in preference to Mr. Davis and to Mr. Darrow, then the testimony of Diekelman and the testimony of McManigal become competent in this case. Without Harrington's testimony, the testimony of Diekelman and of McManigal could not have been introduced. You remember that his testimony was to the effect that Mr. Darrow gave certain instructions to George Behm, to go and see McManigal. Mr. Darrow contradicts it; Mr. Davis contradicts it; and with Harrington's testimony it is inconceivable that you would believe him in preference to these two men. We have the statement of counsel for the other side that there never was a word against Mr. Davis until they began trying this case. It seems that it then became necessary to blacken his character as well as every other witness connected with the defense. Harrington makes a statement as to what Mr. Darrow said to Mr. Hammerstrom when he was directed to go and see the witness Diekelman. He is contradicted by Mr. Davis and he is contradicted by Mr. Darrow; and I mention this to show you that unless you believe Harrington in preference to those two men then you cannot consider the testimony of Diekelman and the testimony of McManigal at all. As the Court

will say to you, their testimony was introduced for a limited purpose. It does not prove the main offence here. It would have a tendency, perhaps, if the witnesses could be believed, to show motive, but it must first be established that Mr. Darrow gave the instructions to these agents that have been referred to by counsel for the prosecution, and that they followed his instructions, and that they did not exceed his instructions.

HARRINGTON'S IMPROBABLE STORY.

Again: Harrington is about the only person that it can be claimed in any way corroborates Franklin's story in regard to the Bains. I have referred to what he said about Mr. Darrow showing him \$10,000, and I again refer to it to call your attention to the improbability of such a story, that a man of the standing of Mr. Darrow and the common sense that he must have would be going around with \$10,000 in his pocket, pulling it out of his pocket and displaying it on a porch lighted as that porch was that night, making the remark that he made as Harrington claims. It is a figment of the brain of this man; it is an invention of his own. Manifestly, nothing of the kind ever occurred; and he is contradicted upon this point by Mr. Darrow, which would be sufficient, if there was nothing else; for, certainly the word of Clarence Darrow is as good as the word of the man Harrington. And he is likewise contradicted by Mrs. Darrow. She was there. Harrington was there visiting. He was a guest, and his daughter was a guest—and a guest that would go and spread a falsehood of this kind is unworthy to be called a man. They came out from a dinner; and there was the house—the house sat upon a hill; the little girl wanted to see the flowers; it was so dark that they couldn't readily see them, so Mrs. Darrow lighted the porch, a large lamp in the center, two large lamps on the side. She saw that that wouldn't do. She left the little girl on the porch. The conversation manifestly did not take place while the little girl was on the porch, because if it had they would have introduced her testimony. Mrs. Darrow went up to the balcony and turned on the balcony lights. She came down, and she went down into the yard. At no time was she more than fifteen feet away from these men as they stood there upon that balcony. Mrs. Darrow was where she could have heard the conversation testified to by Harrington if any such conversation had taken place. Right across the road, a narrow street, were houses; neighbors on each side, and the Darrow house brilliantly illuminated, Mrs. Darrow there with the girl not more than fifteen feet away at any time, and the little girl picking flowers and running up on the porch every moment and handing them over to her father. That was the situation that night—and yet, Harrington says that Mr. Darrow pulled out the \$10,000 in money and displayed it. Later I shall show you that it is highly improbable that he had any such money. And Harrington says Mr. Darrow stated that he got it from Tveitmoe's bank—and somebody said during the course of the trial, "I never heard of Tveitmoe's having anything but a sand bank;" I think it was Mr. Rogers, it is part of the record anyway. But did Mr. Darrow display money there? It could not have been done without this wife knowing it. She absolutely contradicts it. She and the little girl were for a few moments down among the flowers. They then went back upon the porch. Mr. Darrow laid down in a hammock. Mrs. Darrow sat there facing these men. The daughter sat there, and they were all talking, as friends talk, and yet Harrington says that at that time this man, "like a buffoon," displayed \$10,000 and said, "I have got that to fix a couple of jurors with."

Now, you have got to believe Harrington in preference to Mrs. Darrow; you have got to believe him in preference to Mr. Darrow; you

have got to believe this man who is contradicted over and over again, as I shall show you, and impeached over and over again—impeached by his own conduct, proven to be an unreliable man by that which he has done, and impeached by unimpeachable witnesses. Then, again, this man comes forward and he tells of that “confession” on November 28th; that after the arrest of Mr. Franklin that Darrow at ten o’clock in the morning came to the office, called him into the room for the purpose of making to him “a confession.” And this story is as improbable as the \$10,000 proposition. He says, “Mr. Darrow called me into the room, and as I came into the room he said, ‘If Franklin speaks I am ruined’”—made that declaration there to Harrington; and said nothing more. We have shown that at that very moment Darrow was entering the court room. Judge Gray says there are little things that establish the truth—and so there are. There came to the rescue of Mr. Darrow from the story of this wicked man the fact developed by a witness for the prosecution that Darrow was just entering the court room at ten o’clock that morning. We know where he had been previous to that time; he has been traced along up the street; he didn’t go to his office; he had the talk down here on the corner with Mr. Browne, and Sam Browne, a detective for the prosecution, went into the court room, took a look in there to see if the District Attorney was in there, saw that he was not there, turned immediately, walked out, and when he got to the elevator Darrow was just getting off the elevator—and that is the very time that Harrington says he was making that confession. Oh, the falsifier! The ingrate! The false friend! who would attempt to send a man to the penitentiary by perjured testimony. Mr. Darrow went into the court room. He remained there until court adjourned. Then the lawyers all went down to their office together. There was no time when he could have had that conversation with Harrington. If there wasn’t anybody else but detective Samuel Browne to contradict Harrington on that point it would be sufficient. The people have attempted, whenever there was a weak spot, to call Harrington to fill in and give the testimony that would be necessary to corroborate upon that point. So he came forward and testified that at the very time Mr. Darrow was getting off the elevator—just about ten o’clock Sam Browne says—he was down in his office confessing. When you find a man so clearly proven to be a falsifier, how can you believe him with regard to anything? When you find that that man is willing to entrap a friend, as he was, and to use that infernal invention for giving him away to the prosecution, how can you believe him at all? You remember the consultation that he had there in Chicago to which I have referred. You remember more than once he admits that he met this man who represented the Erectors’ Association, that was interested in the prosecution of that case; that concern manifestly is interested in the prosecution of this case.

Will you believe Harrington? Will you believe him in preference to Mrs. Darrow? Will you believe him in preference to Clarence Darrow? Will you believe him in preference to Le Compte Davis? Oh, was ever decent man so hounded as Darrow has been by these witnesses produced by the prosecution? By Harrington, whom he fed and befriended; by Franklin, whom he employed and paid; by George Behm, who was induced to come out here and denounce him? Was ever man so hounded; was ever man so bitterly followed; was ever man so unfairly treated, as this defendant has been treated?

HARRINGTON’S CHARACTER DISSECTED.

Let us look at Harrington once more, because over his own hand he writes himself down to be a liar, a traitor, and a blackmailer—and if there is anything meaner than a blackmailer I wish someone would

tell me. Mind you, he left Mr. Darrow's house, where he had been living, where he had been warming himself by the fireside and visiting with the wife while the husband was down town evenings; and by his own admission, within two days he told the United States District Attorney all the conversations that he could remember, that he had ever had with Mr. Darrow. He left there by the 30th of December, so by the first of the new year, according to his own testimony, he had disclosed everything that he knew. And he went back to Chicago, and when he got back to Chicago he wrote a letter to Mr. Darrow. I will read you the letter again: (Counsel reading.)

"Chicago, January 20, 1912. Dear Darrow"—addresses him as a friend. Was he a friend to Darrow at that time? Hadn't he betrayed him; hadn't he betrayed his wife by going down and telling all that was said by the fireside? Hadn't he falsified? "Dear Darrow"—the hypocrite, to so address a man whom he was striving to put into the penitentiary. "Cooney got subpoenaed before the Federal Grand Jury at Indianapolis, and I am afraid he has talked a good deal. I have been shadowed since my return, and a fellow called me up one evening at my house and tried to get some information from me." For see that he started out with a lie. He had given all the information he could give. He admits that was within two days after he left Darrow's house that he had told everything that he knew to the United States District Attorney; yet he starts out this letter claiming to be a friend—hypocrite that he is, by saying a fellow was trying to get information out of him and he was being shadowed. Why should he be shadowed? They had him. He had been induced to go over to them by some subtle process, I know not what—he had gone into their camp; he was to be their mainstay in the prosecution of Darrow, and he knew it; and yet he lied and says, "I am shadowed, and a fellow tried to get information from me. I let him do all the talking." Of course. "Burns' men are making great cracks here that they are going to get you, and some of your friends are worrying, and quite a few lawyers spoke to me and expressed sympathy for you. You are, according to the enemy, within their grasp." Why did he write it? He wrote that to threaten Mr. Darrow, as will appear later in this letter. He was working up his blackmailing scheme. He had already himself disclosed all he knew, and he had disclosed that which he did not know, and which he knew was not true. "This Burns fellow also mentioned about Hammerstrom, and it seems they are after him, too"—to scare Mr. Darrow if possible a little more; to show that they are after his brother-in-law. He claims to be doing this as a friend, mind you; and are you going to believe that kind of a man? There is a copy of his letter that is in evidence—I can show you the original, if you desire—writing himself down as a liar; and they depend upon such testimony to convict this man in whose behalf the whole City of Chicago has spoken.

(Resumes reading.)

"I don't like to put too much in this letter, as it may be tampered with. They know a good deal, and are certainly after us." They had already got him, so they weren't after him—they had him body and soul, and they had his perjured testimony. They had what they wanted from him; so he lies when he says, "They are after us." Not a line without a lie. (Resuming reading.) "They think if they got you they would be doing a great thing. If I could see you I would be able to tell you lots more." No doubt of it. His imagination is only equaled by his ability to talk. No doubt but what he could tell a lot more. He told a whole lot that nobody else knew anything about, apparently, to the United States Attorney. Now comes the point, having led up to it, the blackmailer shows his hand: (Reading.) "My business has

gone to the dogs, and if you will, I think you ought to send me a check to pay me for the loss I have sustained."

First he proceeded to try and scare Darrow by the statement, "They are after us; they are following me; they are after your brother-in-law; Cooney has been subpoenaed down at Indianapolis; the Burns men think it will be a great thing to get you; your friends are scared and sympathizing with you; and now I want you to send me a check to make good my loss." First intimating he could tell a whole lot, but he had already told more than he knew; and then demanding money. And, as if that was not enough, he wrote another sentence: (Reading.) "I thought that maybe I would also be subpoenaed by the Indianapolis grand jury. Very truly yours, John R. Harrington."

HARRINGTON SUCCESSFULLY IMPEACHED.

Had Mr. Darrow been what Judge Gray depicted him to be, a witness-buyer, a juror-buyer, a dishonest man, a criminal at heart, he would have sent the money to that man at that time; but the fact that even Harrington, with the hardihood he has, never dared to intimate from that witness stand that Darrow sent him a cent, shows that he did not; Darrow defied him; he defied him as he defied all the hosts of evil that have been marshalled to try to send him to the penitentiary.

I have shown you that Harrington is impeached by the improbability of his own story; that he is impeached by the fact that he tried to blackmail Clarence Darrow; that he is impeached by the fact that he is contradicted by Mr. and Mrs. Darrow, and Le Compte Davis. Now let me call some other witnesses to your attention.

F. R. Dyas, a reporter on The Tribune, in March, 1911, tells that he talked with this man. Mr. Dyas was engaged in his duty as a newspaper man, and Harrington said to him, "I have no knowledge of any bribery or corruption in this case, and no information of that kind that I could give against Mr. Darrow, if I wished to." He had already made his statement to the United States Attorney; he had already told about this \$10,000 matter; he knew that that was in his mind, if it ever occurred; and yet he declares there to this witness that he knew nothing of the kind. So he is contradicted and impeached by that witness. He was lying at that time in order to cover up. When you find a man is a general, all-round liar, you can't believe him under oath. When he lies from one month to another month; when he lies to this man and lies to that man, you can't believe him under oath, because the oaths will run from his conscience as water will run from the back of a duck.

And Hartenstein says about Christmas holidays Harrington said, "I believe the question of bribery is a put up job. I have never seen anything indicating it. Darrow always said everything must be carried on honestly."

Mr. Fletcher Bowren, the reporter for the Examiner, who sits here in the court room, in March, 1912, says that Harrington said, "I know nothing criminal in Darrow's connection with the case."

Why, they justify these lies by saying it was necessary in order to conceal something. Then the truth is only to be used when there is no necessity of saying anything else, is it? It is a queer code of morals Judge Gray must have, when he justifies lies such as have been put forth here. It does seem to me that sometime, way back in the dim distant past, amid the thunders of Mount Sinai, God said, "Thou shalt not lie." Can it be that God's command has been forgotten in this day and age, and that the prosecution, where the officers are supposed to be under oath, can justify such lies as this man has told?

Fremont Older, editor of the San Francisco Bulletin, contradicts him. And when this Harrington gets on the witness stand, after he has been sworn, he denies having these conversations with these people. Mark that—under oath he denies it. Mr. Bowren swears to it. Which will you believe? Mrs. Hartenstein swears to it; which will you believe? Mr. Dyas swears to it; which will you believe? Those people have no interest in this case. Those newspaper boys have no interest except to tell the truth. Harrington has a manifest interest here.

Can you believe the story of a man that swears that he never said these things when he is contradicted by men under oath who say he did say these things; can you determine that he is to be believed in preference to all the other witnesses?

Le Compte Davis contradicts him as to the instructions given to Hammerstrom and Behm in the McManigal matter. W. P. Belden contradicts him, for he says shortly after Franklin's arrest that Harrington declared, "A man is a fool to think Darrow had anything to do with bribing a juror. I know Darrow had nothing to do with it." And upon this falsifier's statement depends the collateral evidence of Diekelman and McManigal. After all, what does the Diekelman affair amount to?

THE DIEKELMAN INCIDENT.

Diekelman was being pursued by the Burns people. Darrow and Davis and those defending the McNamaras heard that Diekelman's testimony would be in their favor. They sent a young man down to Albuquerque to see him, to learn what he could; and to take him to Chicago, and get him a job if possible, to save expense; and have him where he could be brought back here for the trial. They were not seeking to keep the witness away from court, for they gave him \$100 to come to Los Angeles with. There is nothing in it, when you take Diekelman's story, but what any lawyer might properly do. It has been amplified and magnified by counsel, and it has been discussed as if it was an enormity—when it was simply an effort by Mr. Darrow and the other attorneys for the defense, to see what the witness was going to testify to. As has been said, the names of witnesses are put on the back of an indictment so that counsel may find out who the witnesses are, and what they they are going to testify to. And that was all Darrow attempted to do with regard to McManigal. There were conflicting stories as to whether McManigal had been forced to make confessions; and Darrow said to Behm and Mrs. McManigal, go and see the man, and tell him if he had been induced to make these statements through pressure, that he is entitled to tell the true story; that if he wanted him to defend him, he would defend him, but to say that he could not promise to acquit him, as that was an impossibility for any lawyer to promise. I don't know what they said to McManigal when they met him; I don't know what was said to Diekelman; but I do know from Le Compte Davis the instructions given these people, and I do know that neither Darrow nor Davis were doing a single thing that a lawyer need be ashamed of. And, mind you, in order to believe this story, you have got to believe that your fellow townsman Le Compte Davis, whom Judge Gray says has been a good citizen and a warm friend and supporter of the District Attorney, in order to help Darrow, has come upon the witness stand and perjured himself. Can any man believe that of Le Compte Davis? You know him better than I do; but I have known him since my connection with this case, and I never met a fairer witness, and I do not believe there is a squarer man than he. I don't believe you could induce that man to falsify, even if his own life was in peril. And you have to believe this man Harrington in preference to Davis, or else you cannot consider the testimony of McManigal or the testimony of Diekelman.

BIDDINGER, THE BURNS DETECTIVE.

Now, as to Biddinger—"the honest witness," Biddinger, the angel. All there was of that incident was this: Biddinger was here working for Burns. Darrow thought that he could find something out from him. He tempted Biddinger with that which he naturally knew the man would want—told him that he would pay him for any information that he could give. That was all there was of it. Biddinger was for a long time on the Chicago police force, they say. Well, the longer a man is on the police force the worse for the man usually. Besides, this man graduated, you remember, from the red light district of Chicago. He told you of his early life, of the saloon that he kept, and where he kept it. From that he went on to the police force, and jumped into the position of sergeant over night. And now, while it is claimed he is on the Chicago police force, he is in the employ of William J. Burns, going here and there, or anywhere it is necessary to use his testimony in order to win a case. There is very little to be said about his testimony, because it don't amount to anything. There is nothing to his testimony, except that he says Darrow didn't tell the truth as to the conversation, and among other things that he did pay him money for the information. This man gave one piece of testimony that was a vital piece of testimony—that is, that he knew that Burns had three detectives in the office of the defense attorneys during the trial of the McNamaras. Franklin says that he never met Harrington but two or three times. Harrington says that they never met but two or three times. Later on I will show you that they were constantly together. And I am going to reveal, if I can, the men who were in the defendant's camp and who were giving information to Burns.

Then comes the testimony of Lockwood, which I shall not discuss, because Lockwood's testimony may be true, and yet it does not affect this case. First, Darrow was found not guilty in that case; and, second, we are trying the case now as to whether Darrow bribed Bain, not Lockwood—that case was tried, and Darrow was found not guilty. Lockwood did not see Darrow, and does not connect him with the case any more than the Bains do.

FRANKLIN'S STORY OF NOVEMBER 28, 1911.

Franklin says he went to Mr. Darrow's office and met Mr. Darrow at 14 or 15 minutes of 9 on the morning of November 28th, 1911; that the night before he had been there and had asked Mr. Darrow for money for use on the jury, and that Mr. Darrow said he would call up the safety deposit company and see if it was open; that he telephoned something to somebody, and reported that it was not open, and told him to come in in the morning. So he says he was there 14 or 15 minutes of 9 the next morning. He asked Darrow if he had the money; and he says that Darrow said, "I haven't it, but I will call up Job." We all know who Job is—Job Harriman. He says that Darrow telephoned, and again Franklin says, "I don't know what he said, for I am always careful not to listen when other people are talking." That made me smile. He is always careful not to listen—he, a detective, does not listen when other people are talking. However, he says, "Mr. Darrow turned from the telephone and said, 'He will be over here in a few minutes.'" That shortly after Job Harriman arrived, and he was dressed in a dark suit, "carrying a dark overcoat over his left arm"—he remembers all those details. That when he came into the room Harriman and Darrow went into an adjoining room and were gone about ten seconds, and Darrow came out and handed him \$4,000 in money, which Franklin says he held in his hand until he

got to the elevator and went down the elevator to carry out the appointment he had with Lockwood. Now, the money was to be passed to a man named White. White was to be the custodian, and he was to pay \$500 to Lockwood, and hold \$3,500 until the end of the case, according to Franklin. That was to be done on a corner of Main street in a public place. I walked down there the other day to look the premises over, and there were more people at that corner about the hour that Franklin said the money was to be passed, than there is on Broadway when there is a sale on at one of those big department stores. Franklin selected a place where somebody could see it done. He says he went down there, and the money was to be turned over to Lockwood at the corner of Los Angeles and Third streets. He went down there, and met Detective Campbell, and as soon as he saw Detective Campbell he was suspicious. He saw White across the street by the saloon—he didn't go and tell White it was all off, they were discovered; but he went into the saloon and remained there with White about ten minutes, and handed the money to White in the saloon; and then they came out and White passed the money to Lockwood, and then White and Lockwood were arrested; and he says Darrow came up to him as they were coming near the sidewalk, and says, "They are on to you, Bert." Now, everything indicates, to use the language of the street, that this was a "frame-up." The place selected; the fact that Franklin turned the money over to White after he was afraid of detectives—all indicates that it was an attempt to furnish evidence that would completely break down the McNamara defense, and blacken Darrow so that he would not have an opportunity to ever defend anybody else. Franklin's story is unbelievable. After he was arrested, he tells certain stories, and says at that time he was doing it in order to shield Darrow. And that is the excuse that is made. But, mind you, Franklin was declaring that Darrow was not guilty as late as the middle of March, after Franklin had pleaded guilty, and when he could no longer shield Darrow—at that time he was telling every one that Darrow had nothing to do with it. March 12th, he talked to Steineman, and he talked to Pirotte and talked to Watt. He was contradicting the statement that he was doing it for the purpose of saving Darrow.

FRANKLIN'S STORY SHOWN TO BE FALSE.

Now, let us go back to the morning of November 28th. There has been upon the witness stand a man apparently as honest as any man that testified—Leonard Shober. He was the night watchman of that floor where Darrow's office was, and he was on duty that morning from 2 o'clock until Mr. Russell came, who was one of the employees in the office of the defense. Shober went home then, and went to bed. In the evening he read the newspapers and saw that Franklin had been arrested, so he knows this incident occurred on the day Franklin was arrested. That morning at 10 or 15 minutes of seven o'clock, Tuesday morning, Franklin came into the hallway with a stranger, a small, sallow complexioned, dark man, weighing about one hundred and thirty pounds, wearing dark clothes. Franklin said, "This is a friend of mine, and I want you to let me have a place where I can talk to him." So he let them go into a room, and there Franklin was with a stranger ten or fifteen minutes. Then they come out and went away. That morning Franklin's wife left the house at eight o'clock, because she was at their office at 8:30. She would have to leave at eight o'clock or about ten minutes past eight to get to the office at that time. Franklin left the house before his wife left it, so his wife testified. Where was he during that time? Does he attempt to account for his whereabouts? Does he tell you what he was doing? Shober says he was

in the hallway and in the office with a small man, weighing about one hundred and thirty pounds, a stranger whom he had never seen. Shober must have been telling the truth. Franklin did not explain where he was that morning—and it is a significant thing. And, mind you, the testimony of Shober becomes very strong, and it is corroborated by the fact that before ever it was told for the benefit of the defense, or to the defense, he was before the grand jury and described that man. That has been read to you here. He describes him substantially the same as he did here. So he was telling the prosecution, when they were taking him before the grand jury, this incident. It cannot be said that Shober's testimony was made up by the defense, else it would not have been disclosed to the grand jury.

Not only that, but Shober is corroborated by Franklin himself. Franklin went to Col. Tom Johnson, a lawyer, paid him a fee, and met him as his lawyer and consulted with him, and advised with him; he told Johnson that Darrow had had nothing to do with the bribery; that the money was furnished by a small, sallow complexioned man; and to Mr. Hood he stated, "That man was within thirty feet of me when I was arrested"—a stranger. How are you going to reconcile this upon the theory that Darrow was the man that furnished the money? What was this small, sallow complexioned man doing there?

Those are facts in this case that cannot be swept away. Shober is corroborated by Johnson. He is corroborated by Mr. Watt. Franklin told Mr. Watt there was other money circulating around that the lawyers knew nothing about. Not only that, Franklin's story of the incidents of November 28th is absolutely disputed and swept out of the case by unimpeachable witnesses.

Job Harriman had a note falling due at the bank that day, and he had to pay it. Banks sometimes want a man to pay money. Harriman had the money in his safety deposit box in the form of gold. That he had gold in that box is testified to by French, the custodian, who frequently lifted the box and heard the clink of gold. Franklin was at the vault at eight o'clock on the morning of November 28th. French says that he remembers it, because he was attracted to Harriman on account of the fact that Harriman was the candidate for Mayor on the Socialist ticket; hence it attracted the attention of French. The election was December 5th, and he says Harriman was there about one week prior to December 5th, at about 8:30 in the morning. That would bring it about the 28th of November. Hawley says he saw Harriman coming out of the bank at 8:30 that morning. Harriman went over to his office in the Higgins building, and there he gave Russell \$500, who deposited the money and drew the check to pay the note. I don't care what they say about the mistake on the deposit slip, here is the check drawn on that date in Russell's handwriting, and signed by Job Harriman, and that speaks as a witness. That is what they did there that morning—there was a note that had to be paid—and here is the note. From his office Harriman went back to the Socialist headquarters, and at the Socialist headquarters he met C. O. Hawley. Now, you must say that Hawley is a liar, or else there is nothing to the case for the prosecution. Hawley that morning was interested in an editorial in the Tribune. He was excited about it, and he called Harriman's attention to it—it was something about the Old Guard politicians—and, by the way, they have so many parties here I have not been able to distinguish them in my limited time, and I may get mixed; but what they call the Old Guard it was said had combined with the whiskey interests, and it worried Hawley; so he talked to Harriman, and Harriman told him that Darrow would know something about it, if anybody would. They telephoned to Darrow, and Hawley waited there, and Harriman waited there for Mr.

Darrow—and this was done about 9 o'clock in the morning. Darrow that morning started down town about half past eight. He lived then on Bonnie Brae street. He met Wolfe on the street car, and Frank Wolfe, if he tells the truth, disposes of this case, for to convict you must find he lies also. You have to believe Franklin in preference to Wolfe. You must believe Harrington in preference to Wolfe. Darrow and Wolfe rode down town together on the car, and discussed the political situation. They continued to talk about it after they got into the office. Judge Gray says it is remarkable that Wolfe could remember that he went into the office and hung his coat up. Isn't it remarkable that Franklin could remember on that morning that Harriman carried a black overcoat, when he hadn't had a black overcoat for eight years? No man who knows Frank Wolfe will believe that he testified falsely. I believe you can ask any newspaper man that has been associated with him, and they will all tell you that he is one of the kindest, most honorable and noble men in their profession. Darrow and Wolfe talked awhile and then the telephone rang at about 9 o'clock, and Mr. Darrow said, "I have got to go down to the Socialist headquarters to see Job;" and he left—and that was the very time that this man Franklin says he was getting the \$4,000. Darrow and Wolfe were together from half past eight until nine o'clock—Wolfe was with Darrow all the time. He could not have passed the money to Franklin, and you can't believe it; and they can't prove it. No, we have swept their case out of the court room by the testimony of unimpeachable witnesses.

Mr. Darrow started for the Socialist headquarters, which were on the east side of Main street. (Counsel drawing on blackboard). We will suppose this is Main street. Mr. Darrow approached this corner—there is a jog there—and he started diagonally across the street, as he naturally would, because if he crossed that street (indicating on diagram) he would then have to proceed and cross another street. So he crossed here to go down to the Socialist headquarters. As he approached this curb Franklin was arrested. You can see naturally he would take a cut across as he did. He wasn't going in that direction in order to meet Franklin. Franklin says that at that moment Darrow said, "They are on to you, Bert." Sam Browne, the detective, who arrested Franklin, says that nothing of the kind was said, and if it had been said Browne would have heard it. So you have to disbelieve Sam Browne and believe Franklin. But if Franklin would lie about that thing, he would lie about the other thing. And those are the instances of the morning.

Fault is found because Mr. Darrow furnished the bail for Franklin. I want to tell you that afterthought is a great deal wiser than the thought we have at the time a thing occurs. At that time Darrow was distressed, and wondering whether the arrangement that had been made with reference to his clients' pleading guilty and their lives being saved, was going to be carried out. Naturally when Franklin was arrested Darrow was worried and distressed. Franklin was his employe; it was Darrow's business to believe him not guilty. Darrow came up the street and had a talk with Sam Browne. I don't care if he used the language Browne claims; it is not the language of a criminal; it is the language of a man in great distress of mind. But it is said he furnished the bail, and he employed lawyers for Franklin. They brought Mr. Scott on the witness stand to testify for the prosecution, and they are bound by what he said; and he endorsed that act, and it was proven by us that Davis proposed that the bail should be put up. Mr. Darrow said, "If you say you will be responsible, well and good; I don't want any bond from you." And Darrow gave Davis a check out of the defense fund. Nothing criminal about it. Why, one of the

greatest things that can be said in behalf of John Sparks, who was one of the great governors in this country, the governor of Nevada, was, that when a man in his employ, called Diamond Field Jack, was convicted of murder and sentenced to be hung, Governor Sparks spent over \$30,000 in his behalf, and finally demonstrated that the man never committed the crime. Yet it could have been said about him, if the man had been hung, that he was defending a guilty man. At that time there was a war on between the cattlemen and the sheepmen out at one of Sparks' ranches in Idaho. But Sparks stood by Davis, as a man ought to stand by his employes, until it is demonstrated that they are unworthy of the trust and confidence that you give them.

Where did the money come from that Franklin had? I have more evidence to show it came from the National Erectors' Association than the prosecution has to show that it came from Mr. Darrow. We have demonstrated it didn't come from Mr. Darrow. You know that the Erectors' Association, a branch of the Steel Trust, is interested in this prosecution, and I take it that their agent, Foster, would not be above doing anything that would destroy the defendant. This man Franklin, whom you must believe in preference to these men I have named, is impeached and contradicted by over thirty witnesses.

IMPEACHMENT OF FRANKLIN.

He is impeached and contradicted by Daniel M. Willard, Associated Press correspondent, who says on December 18th, Franklin said to him, "Darrow knows nothing about this affair."

He is impeached and contradicted by Mr. J. L. Bernard, who was reporter on the Express of Los Angeles, whom Franklin told on December 18th, "Darrow is innocent of any connection with the case in which I am involved."

H. H. Jones, of the Associated Press, says that Franklin told him, "I am not going to drag an innocent man into this thing."

C. S. White, of the Los Angeles Express, says that Franklin told him, "Mr. Darrow is innocent of any connection with my case, and I don't propose to drag in an innocent man."

D. V. Nicholson, reporter for the Examiner, says Franklin told him, "Darrow never gave me any money to bribe jurors. He knew nothing about it." He says, "A man in Frisco gave me the money."

Joseph Musgrove says in the early part of December, in Bush's store, Franklin said, "I am playing my cards. And before I will go to the penitentiary, I will slip it to someone else." Listen to that statement that he made then: "Before I will go to the penitentiary, I will slip it to someone else."

F. L. Stineman, formerly bank director, says that March 14th or 15th, at the Alexandria, Franklin said to him, "Outside parties furnished the money. Mr. Darrow never gave me any money to influence jurors. A Frisco man gave me the money."

George W. Hood says in January, 1912, Franklin stated he couldn't put the money in his jeans and keep it; he was too closely watched; and he said, "The man I got the money from was a stranger; he fixed up the proposition. He was thirty feet of me when the money was passed, and disappeared when the crack came. I think the money was given me by a man from San Francisco, or possibly an Eastern man."

Frank Dominguez says that on December 10th, Franklin said, "I never received a dishonest dollar from Darrow; he wouldn't stand for corruption. Don't worry about me; I will get out of this all right. Captain Fredericks is my friend."

If Captain Fredericks is the greatest District Attorney in the United States, as Judge Gray says, he had better change his friends, or else he will lose his standing, and probably his high position.

George H. Drain says December 10th, he had the same conversation with Franklin that Mr. Dominguez had.

Gordon Watt said—

MR. FORD. You have got that mixed.

MR. POWERS. You are anticipating. That is the trouble with the prosecution in this case; their minds lead them faster than a man can tell things. Gordon G. Watt, secretary of the Montana Senate, says on March 12th, at Ocean Park, Franklin said to him, "They are holding the Lockwood case over my head, to make me testify against Darrow. He never gave me any money for corrupt purposes. There was other money there that the lawyers knew nothing about."

Peter Pirotte says Franklin told him, "I am going to get out of my trouble all right. The District Attorney's office don't want me; they want Darrow."

Why? Because Darrow had dared to stand for organized labor, and to stand for the weak and oppressed.

Col. Tom Johnson, the lawyer, says Franklin described to him the man who gave him the money, and told him if he could secure immunity, to do so. And Johnson says, "I told him to tell the truth;" and he said neither Davis nor Darrow gave him the money. They knew nothing about it. "If I said so, it would be a damned lie."

He told that to his lawyer when he was seeking advice, when a man is supposed to speak the truth.

He told Miss Kernaghon, who says she saw him and Harrington together fully two dozen times, and saw them frequently in consultation. While Franklin says he never was with Harrington but two or three times.

To Mr. Le Compte Davis and Darrow, on January 14th, he repeated the Johnson conversation, and stated at other times that a stranger put up the job.

He is contradicted and impeached by Mrs. Robert Bain—and she is vouched for by Judge Wheaton Gray. She says he offered her \$500 down and \$3,500 at the end of the case. Franklin says that he offered her \$500 down and the balance of \$2,000 at the end of the case.

JUDGE GRAY'S OPINION OF WOMAN.

There is Robert Bain, who testifies the same way—and right here I want to call attention to that beautiful tribute which Judge Gray paid to woman. "Why," he says, "woman don't know the value of money; woman can be wheedled and hornswoggled and made to do almost anything that a man wants her to do. Woman is a poor, feeble-minded, irresponsible creature"—and yet she votes in this State; and when my friend again runs for office, some suffragette will arise and read these remarks to the audience. "Why," says Judge Gray, "it is not strange that Mrs. Bain yielded. Woman don't know the value of money." Any man that knows anything about his wife, knows how she will scheme and skimp to get along; and she will make a dollar go five times farther than he can; and he knows that Gray's statement is not based upon the facts. Woman is a better financier, more conscientious; her morals are higher; she is immensely more religious; she is a hundred per cent better than any man that was ever born. To her we owe our present position as a great nation; and as a world power. It is through the power of its mothers that America owes its greatness—it is they who taught their children honesty, and morality, and the value of a dollar and to be industrious and do the right; and it is they who have made the nation what it is today. It is the mothers

that will preserve this government, if it is to be preserved. I disagree with my friend's opinion of woman.

Sam Browne, too, contradicts Franklin as to the conversation at the time of the arrest. And another thing, Franklin claimed that Le Compte Davis telephoned down to Darrow—that Sam Browne had telephoned to him Le Compte Davis, and the word was passed to Darrow, that the arrest was to be made that morning. Judge Gray says Sam Browne is an honorable man, and I agree with him. He denies that he did such a thing. He would have been unfaithful to his trust, if he had done so. Darrow denies that he received any such word; Davis denies that he received any such word. So Franklin is impeached again upon that point.

Franklin is contradicted by the bank teller as to the size of the bills. The bank teller testified that the bills he gave him were fifties and hundreds. Franklin said that they were twenty-dollar bills.

Franklin is contradicted by Mrs. Franklin, his own wife, who says that Darrow telephoned to her about nine o'clock, November 28th, 1911, and asked where her husband was. If money was to have been passed that morning at Third and Los Angeles street, Darrow would have known where Franklin was.

Franklin is contradicted and impeached by Leonard Shober with reference to being at the office on that morning.

He is contradicted and impeached by I. H. Russell—and I want to denounce the effort of Judge Gray to blacken the character of a young man starting out in life, as Mr. Russell is. He asserted to you that Russell was a tool of Clarence Darrow, and that Darrow had taught him to go upon the stand and lie. I will put Russell's word against the word of Judge Wheaton Gray, although he is an older man, and perhaps a more learned man; but he has no right to come here—a man who is paid by the Steel Trust, as special attorney for the prosecution—he has no right to come here and blacken the character of a young man like Mr. Russell.

Franklin is contradicted and impeached by Job Harriman, and by Hawley, and Mr. French, the safety deposit clerk. Also by Frank Wolfe, Allen Dixon Warner—and altogether more than thirty different witnesses, none of whom have been impeached.

THE STORY OF THE BAIN BRIBE.

Now, take his story of the Bain bribe, or attempt to bribe. Such a bungling conspiracy was never conceived by a man as bright as Clarence Darrow.

They say that Darrow had \$10,000 in his pocket to bribe jurors with, and yet, on October 6th, this man Franklin says that Darrow drew him a check for \$1,000. Do you believe that if Darrow had the money that he would draw a check and leave his tracks? If he had the \$10,000 in cash from the bank in San Francisco, so secured that it could not be traced, why should he be drawing a check? That contradicts the whole story. That shows the improbability of it. You can take either horn of the dilemma; either that Harrington is lying about the \$10,000 matter, or that having the \$10,000 Darrow draws a check in order that it can be traced and can be followed; and yet, he is compared to a fox. A fox wouldn't do anything of that kind. It would be unlike Mr. Darrow to do it. More than that, the story that Franklin tells is the story of an illiterate man, not of an educated man; is not that of a man of the standing of Mr. Darrow. The story that he tells about Darrow rubbing his hands and saying, "Bain was pretty cute when the peremptories were to be exercised; he partly raised up out of his seat as if he were going to leave and then he sat down again." Imagine Clarence Darrow holding with Franklin any such conversation

as that! Imagine Clarence Darrow sending Mr. Franklin out to Bain's house in broad daylight to bribe a man! In an automobile! Inquiring of the neighbors where Bain lived! Leaving his tracks everywhere! Why, that man might just as well have traveled with a brass band and shouted through a megaphone, "I am on my way to bribe Robert Bain," as to take the course that he said that he did.

Again, it is improbable that after Bain told Franklin that even if he took the money he would vote for conviction if the evidence was strong enough, that he would pay the money over to such a man. If he was putting up a job to involve Darrow and the defense he would be just as willing to give it to that kind of a man as to anybody else. You must assume that Franklin had a little common sense. He says that the conversation with regard to bribery occurred on October 6th, the day that he received the check; that he had a talk with Darrow in his office, and that Darrow turned to his desk and wrote a check for \$1,000. That check is here. It is dated October 4th. Mr. Darrow testifies that it was dated correctly. Five checks have been introduced that show that Franklin was in the habit of carrying his checks in his pocket before depositing them. So the check contradicts Franklin so far as the date is concerned and he fixed the date as the 6th of October, being the time when he deposited the check. The story does not tally. It don't link together. It indicates that the man is telling something which is not true, for the check contradicts him. He went over to the bank. He deposited the \$1,000 and drew his own check for \$500, and he drew out \$500. As I have stated the bank teller says it was in large bills—fifties and hundreds. Franklin said he thought it was in small bills. He goes out to Bain's house. He has a talk with Mrs. Bain. Mrs. Bain wants him to subscribe for the Examiner. He offers her a fifty or a one hundred dollar bill, she says.

He admits that he offered her a fifty-dollar bill. Where did he get it from if he had drawn out twenties? He only had \$109 to his credit in the bank—\$109.10 at that time. Where did he get it from if he drew out twenties? Manifestly, not from this money. But he also says that she immediately started to write the receipt and he asked her to let him write it. He says he then handed her a twenty-dollar bill; she gave him back eleven dollars in money, for he was to pay her \$9 for the Examiner. She says he first offered her a fifty-dollar or a one hundred-dollar bill. She told him she hadn't seen so much since she was a cashier. She couldn't change it. He offered her a ten. She couldn't change that; that he fumbled in his pocket and pulled out nine dollars and paid her, and then he made out the receipts. The stories don't connect. It shows that he is not telling the truth. He is contradicted by this woman, and when he comes to pay the money over to Robert Bain at night he gives him twenty twenties. Mind you, he admits having at least one fifty that afternoon.

He says he only had \$400 to pay Bain at the time, because \$100 had gone, he didn't know where. The banker had given him fifties and hundreds. Mrs. Bain saw a large pocketbook filled with large bills. He offered her a fifty or a hundred, and yet he pays twenty twenties over to Bain that night. It don't connect up at all. The story doesn't tally. It is improbable; it is an inconsistent story—as inconsistent as any story that has been told here. And you know the only thing to be tried here is the question whether Mr. Darrow bribed or attempted to bribe Robert Bain. Franklin testified that the first time that bribery was mentioned was the morning of October 6th. He is positive of that date. The check shows that it was not given on that date, as I have already argued. The main question in this case is swallowed up by irrelevant matters, and right here I direct your attention to a salient fact, and that is this: If, as claimed by the pros-

execution, Darrow purposely misdated that check—and that is the claim that is made—would he have given any check at all? Wouldn't he have given money? It is a silly, foolish thing to say that he dated the check two days back because that wouldn't prove anything. If he was preparing a defense at that time he would have given money instead of a check.

Now, there has been produced here in a desultory fashion by the prosecution a few reasons why you should convict this man. I am not going to read all that I have. I think I have something like a hundred; but I want to call your attention to the point upon which Mr. Darrow is corroborated, for he doesn't stand here testifying alone. He is corroborated on more than thirty different points.

CORROBORATION OF MR. DARROW.

First: He is corroborated by the date of the check given Franklin October 4th, 1911. The day that Franklin deposited the \$1,000 and drew out \$500 is the day that he went to Bain's house. He says that is the first day Mr. Darrow ever talked to him on the subject of bribing jurors. The check is dated October 4th, and the presumption is that it is dated correctly. This corroborates Mr. Darrow's testimony.

Second: He is corroborated by the fact that Darrow possesses good character.

Third: He is corroborated by Mr. Wolfe, who came down town with him the morning of November 28th, the day Franklin was arrested. He was with him until Mr. Darrow received the telephone call and started for the Socialist headquarters.

Fourth: He is corroborated by Job Harriman, who testified that he never gave Darrow the \$4,000, as testified by Franklin. He, by his testimony, shows that he was not in company with Darrow that morning.

Fifth: Again he is corroborated by Job Harriman, who related that he had waited at the headquarters expectantly for him to come.

Sixth: He is corroborated by C. O. Hawley, who testified that he telephoned to him, at the suggestion of Harriman, to come to the headquarters that morning.

Seventh: He is corroborated by Mrs. Franklin, who says that he telephoned her the morning of November 28th, a few minutes after nine o'clock, inquiring where Franklin was. Had he been aware of the Franklin plot he would not have had to telephone her.

Eighth: He is corroborated by Sam Browne, the State's detective, who says no conversation was had or remark made by Mr. Darrow at the time Franklin was arrested. He says that had there been any talk he would have heard it.

Ninth: He is corroborated by the fact that he has clearly explained, and is fully sustained by the witnesses, as to why he was in the vicinity of Franklin's arrest on the morning of November 28th.

Tenth: He is corroborated by the fact that, being a man of ordinary intelligence, had he proposed that the juror Bain be bribed and if he had the \$10,000 which Harrington says he saw on the porch, he would have drawn no checks and left no tracks.

Eleventh: He is corroborated by the fact that he was going into the court room at about 10 o'clock, the very time that Harrington testified he was making admissions in his office.

Twelfth: He is corroborated by the fact that immediately after the adjournment of the court that morning the lawyers were all together for consultation and that he had no consultation with Harrington.

Thirteenth: He is corroborated by the fact that instead of Harriman being engaged that morning in furnishing money for bribery pur-

poses he was looking after his own promissory note and seeing that the money was deposited in the bank to pay it.

Fourteenth: He is corroborated by the fact that he had no safety deposit box. If he had had one the prosecution which raked the earth for testimony, would have shown it; consequently he was not telephoning on the evening of the 27th to a safety deposit company for money.

Fifteenth: He is corroborated by the fact that the man Franklin, immediately before his arrest, was suspicious of his being wanted and proposed to turn his friend Lockwood, who had been a brother officer, over to a traffic policeman, and who thus delivering his friend Lockwood to the policeman immediately shows that he would not hesitate to involve Mr. Darrow to save himself.

Sixteenth: He is corroborated by the overwhelming testimony that shows that on the morning of November 28, and prior thereto the agreement had been made that the McNamaras should plead guilty, and there was no occasion to bribe any juror, because no juror was needed.

Seventeenth: He is corroborated by the testimony of Fremont Older, Lincoln Steffens and Le Compte Davis as to the progress of negotiations for the plea of guilty and the fact that the same had been agreed upon prior to November 28th.

Eighteenth: He is corroborated by the fact that it has been established that prior to November 28th he was willing to accept the best term for the McNamaras he could secure and have them plead guilty and thus end the case.

Nineteenth: He is corroborated by Le Compte Davis as to the conversation had with Behm and Hammerstrom and to the further fact that no corrupt purpose was ever disclosed by Mr. Darrow to Mr. Davis or any of the lawyers for the defense.

Twentieth: He is corroborated by the fact that he stands here unimpeached while his accuser has been impeached by a cloud of witnesses and by his own confession he comes into court with unclean hands.

Twenty-first: He is corroborated by Job Harriman, Sam Browne, I. H. Russell, C. O. Hawley, Frank E. Wolfe, Burton French, Leonard Shober—all witnesses of sterling character—as to the events of the morning of November 28th, 1911.

Twenty-second: He is corroborated by the fact that a little before ten o'clock November 28th, after Franklin's arrest, Sam Browne saw him getting off the elevator to go to the court room at the precise time that Harrington says that he was declaring in his office, "If Franklin talks I am ruined."

Twenty-third: He is corroborated by the fact that his conversation with Sam Browne, right after Franklin's arrest, was not that of a guilty man. It indicated surprise, astonishment, fear that the plan for his clients' lives to be saved might fall through, and distress at the disclosure. His conduct was that of an innocent man.

Twenty-fourth: He is corroborated by the presumption of innocence which implies that he is not guilty and which has not been overborne by the testimony for the State.

Twenty-fifth: He is corroborated and sustained by the circumstantial evidence and by the words of living witnesses who have no reason to falsify.

Twenty-sixth: He is corroborated by Mrs. Darrow, whose testimony clearly shows Harrington to be a falsifier, spy and traitor, and that his story is untrue upon all vital points.

Twenty-seventh: He is corroborated by the date of the \$1,000 check, and the further fact that five other checks introduced show that Franklin frequently carried his checks a couple of days before banking them.

Thus he is sustained by witness after witness, by fact after fact, and by circumstance after circumstance. Being so strongly sustained,

it became necessary for the prosecution at the very end of the case to bring up the reserves.

DISTRICT ATTORNEY FREDERICKS' TESTIMONY.

And so, with much pomp and circumstance, with the blaring of horns and the cry of "Make way there!" Fredericks, the District Attorney, went upon the stand, and said in the course of his testimony, "I would not have taken the stand if you had not forced me to." It became necessary for him to take the stand. Their forces had been scattered. Their witnesses were shown to be falsifiers. Their case had completely fallen to the ground; and so, they bring Fredericks here, hoping that his presence, that possibly the friendship of some of you for him, that your respect for the high office that he occupies, might induce you to believe him in preference to others. But, remember that it is the boast of Franklin that Fredericks is his friend. It is conceded here that Fredericks has employed Franklin since he was arrested and plead guilty. And so he comes here to the relief of his friend who is prosecuting this man, who had been overborne by the unimpeachable testimony, and he proceeds to give his testimony as strongly as he can. Nay, he not only attempted, but he sought to defy the rulings of the court. He demanded that he be allowed to put in testimony that the court ruled was not competent testimony in this case. He holds a high and honorable office. He has friends many, it is manifest. Nevertheless, when he goes upon that witness stand he is shorn of his office; he is shorn of all power; he goes there as any other witness goes upon the witness stand and his testimony is to be tested the same as any other witness. When you find that a witness is partisan; when you find that he attempts to inject argument into his testimony, then you cannot give that man such weight as you would naturally give if it was testimony that came from one who was unprejudiced and unbiased. His manner of testifying here was the best cross-examination that could possibly be given here. It was not necessary to cross-examine. And he does not supply that which is lacking in this case. He does not give the testimony that corroborates Franklin upon any of the vital points, and upon which he must be corroborated before this case can be proved by the prosecution. You cannot count upon the testimony of Franklin. Before you can convict Mr. Darrow you have got to believe Harrington. Before you can convict Mr. Darrow you have got to believe Franklin. You cannot convict upon the testimony of the Bains, because in no way do they connect him with the fact. They had no connection with him. All that they say is that Franklin told them certain things. You cannot convict him upon the testimony of these people. You cannot convict him by the check, for we have shown that the check was given two days before he says there was any talk of bribery. You cannot convict him by Diekelman's testimony, or by McManigal's testimony, for their testimony depends for its value upon the testimony of Harrington, and it is collateral. You cannot convict him upon the testimony of Biddinger, for it does not in any way tend in any degree to connect Mr. Darrow with the Bain charge. You cannot convict him upon anything that they have introduced in this case, for there is not even a suspicion left. Nay, more—as I indicated to you, and again I say to you that perhaps I would be a little tedious; of course, I am not here to interest you, I am here to present our case—I have manifold reasons why this man cannot be convicted. I have put them together, because I thought you were entitled to them.

REASONS WHY DARROW SHOULD NOT BE CONVICTED.

First: For the reason that this case must be tried upon the issue made by the indictment and plea which is: Did Clarence Darrow bribe the juror Robert Bain? It is not to be tried upon the collateral matters introduced for a limited purpose, such as the things testified to by Biddinger, Diekelman, Lockwood, McManigal and other witnesses along those lines. The question is, did Clarence Darrow bribe or attempt to bribe Robert Bain? The only testimony indicating that he did is the testimony of Franklin, an impeached, uncorroborated, discredited, contradicted witness, a self-confessed criminal, unworthy of belief, and hence the verdict must be not guilty.

Second: For the reason that Mr. Darrow is not on trial for having paid Biddinger for information from the Burns camp—he is not on trial for inducing Diekelman to go to Chicago. He is not on trial for bribing the juror Lockwood, for he has been found not guilty on that charge. He is not on trial for asking McManigal to allow him to act as his attorney. He is not on trial for any collateral matter. The sole question is, did he bribe or attempt to bribe Robert Bain? And when you strip the case of collateral matter, which befogs the real issue, the verdict must be not guilty.

Third: For the reason that you must try the simple question, did Clarence Darrow bribe juror Bain on October 6th, 1911, as testified to by the immunity-seeker Franklin, who boasted that he was a personal friend of the District Attorney, would never be punished, and would "slip it to someone else," and who is contradicted by every disinterested, respectable witness in the case. This man, whose appearance on the witness stand was the best cross-examination that could be given him, must be believed in preference to a cloud of disinterested witnesses in order to find Mr. Darrow guilty.

Fourth: For the reason that Mr. Darrow has not been compelled to meet the charge: Did Clarence Darrow bribe Robert Bain October 6th, 1911? But he has had to meet everything that could be used against him by presuming him to be guilty, and he has met each charge, proved its falsity beyond a reasonable doubt, and has so completely overwhelmed the testimony for the state that the jurors, in justice to the defendant, should find a verdict of not guilty without leaving their seats.

Fifth: For the reason that when the testimony is dispassionately considered it can all be more readily reconciled upon the hypothesis of the defendant's innocence than upon the theory of his guilt; and when such is the condition of the evidence it is the sworn duty of the jury to render a verdict of not guilty.

Sixth: For the reason that you cannot convict upon general principles, nor simply as a warning to others, nor simply for the purpose of preventing crime. You must have actual and tangible proof of the defendant's guilt that sweeps out of the case every reasonable doubt; and such a case has not been made by the prosecution.

Seventh: For the reason that the counsel for the state recognizes the weakness of the case made against the defendant, and they rely more for conviction upon appealing to your prejudices and by abusing and denouncing the defendant than they do by reference to the testimony. When such conditions exist in a case, it is clear that there is at least a reasonable doubt of the defendant's guilt and he should be adjudged not guilty.

Eighth: For the reason that you cannot lawfully convict the defendant upon the abuse and insinuations of counsel, and when you sweep that away and look to the evidence that has been produced by the state it will be seen that there has not been a case made that will justify a verdict of guilty. Tell me upon your conscience if this be not true.

Ninth: For the reason that the testimony of Mr. Darrow cannot be thrown out of the case, it must be weighed and considered the same as the rest of the evidence. There is nothing indicating that it is false in any particular. It is natural, probable and sustained by strong testimony, and when fairly considered it shows that the defendant is not guilty.

Tenth: For the reason that Mr. Darrow is presumed to be innocent, and when you add to this presumption his own testimony there is no foundation for a verdict of guilty, even if you throw out of the case the testimony of the larger number of disinterested witnesses who prove him innocent beyond a reasonable doubt.

Eleventh: For the reason that so long as one man on the jury has a reasonable doubt as to the guilt of the defendant there can be no lawful verdict of guilty, and it cannot be possible that twelve men can be found in the justice-loving county of Los Angeles willing to accept the testimony of a man like Franklin, who follows a peep-hole profession, in preference to the testimony of Mr. Darrow, whose sterling integrity is vouched for by the great City of Chicago.

Twelfth: For the reason that if you try and determine this case upon the issue which is: "Did Clarence Darrow bribe Robert Bain?" and sweep out the great mass of collateral matter which the prosecution has introduced, there is really no case left for serious consideration, and that is why all the incidental stuff about Diekelman, McManigal, Behm, Hammerstrom and like incidents have been introduced.

Thirteenth: For the reason that the prosecution, being well aware of the weakness of its case if confined to the sole question in issue here, which is, "Did Clarence Darrow bribe Robert Bain?" introduced a great mass of collateral evidence for the purpose, and the only purpose in fact, of hoping to so prejudice you against Mr. Darrow that you will render a verdict of guilty upon general principles.

Fourteenth: For the reason that the man Franklin, according to his own testimony, is a criminal and an accomplice. Under our law a defendant cannot be convicted upon the testimony of an accomplice, unless the accomplice is corroborated by other evidence which in and of itself, without the aid of the accomplice, tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof; and in this case there is not a scintilla of evidence outside of the testimony of Franklin that tends to connect Mr. Darrow with the commission of the offense charged.

Fifteenth. For the reason that the man Franklin was contradicted by Mrs. Robert Bain with regard to the conversation that was had at her house with relation to the bribery of her husband. Mrs. Bain says that Franklin stated that if she would promise to get Bain to qualify that he would pay \$500 that night, and \$3,500 at the end of the trial. Franklin says: "I told her I was in a position to pay \$500 in cash, with the promise of \$2,000 more, and she said she would talk with Mr. Bain along that line." Mrs. Bain testifies that Franklin subscribed for the Examiner for a year, and when the money was paid she spoke of getting her receipt book, and Franklin said, "Let me write the receipt," and he did write the receipt. Mrs. Bain says that Franklin took out a pocket-book filled with paper money and said, "Can you change a hundred-dollar note or a fifty-dollar note?" That when she said she could not, he said, "Can you change a ten-dollar bill?" And when she couldn't do that he fumbled in his pockets and gave her nine dollars, the amount that was due for the paper for one year. Franklin says that he agreed to subscribe for the Examiner with Mrs. Bain, she saying it was nine dollars a year; that he offered her a \$50 bill to be changed, and then he

handed her a twenty-dollar bill, and she returned to him eleven dollars in change, and that Mrs. Bain then handed him a receipt.

Sixteenth: For the reason that if the testimony of Mrs. Bain is true then the testimony of Franklin is false. Any one would prefer to believe Mrs. Bain than to believe Franklin, the accomplice.

Seventeenth: For the reason that the man Franklin is contradicted by the state's witness Robert Bain. Mr. Bain testified that Franklin said he was in the employ of Mr. Darrow; that he would pay \$500 down and \$3,500 when the trial was completed. When he paid the money he handed over only \$400, but said there would be \$3,600 coming to Bain when the trial was completed. Franklin says when he paid the money to Bain he gave him \$400, and told him the balance of \$2,000 would be paid at the completion of the case. He further testifies that at a later interview, and without any demand having been made by Bain, he told him that he would give him \$3,600 on the completion of the case. It is manifest that if the testimony of Robert Bain is true the testimony of Franklin is false. Any man would prefer to believe Robert Bain as against Franklin, the accomplice, testifying for immunity.

Eighteenth: For the reason that Franklin is contradicted by the circumstances in the case. Franklin states in his testimony that Darrow gave him a check for \$1,000 on the 6th of October, from which he paid \$400 to Bain. Bain testified that Franklin said Darrow had furnished him \$20,000 to use in this case. That statement is manifestly untrue, because if Darrow had furnished him with \$20,000 he would not furnish him with a check for \$1,000.

Nineteenth: For the reason that the testimony of the state is inconsistent and contradictory in this: That the State claims Darrow showed Harrington \$10,000 in currency in September, saying it was for use on the jury; that he had this money in currency so that it could not be traced. That being so, it would be inconsistent for him to give a check for \$1,000 to Franklin for the purpose of bribing Bain. If he had the cash as claimed for bribery purposes, why use a check?

Twentieth: For the reason that if Franklin has common sense it would be inconsistent and improbable that he would pay money to Bain when Bain stated (as he testifies) that he told Franklin, before taking the money off the table, that if the evidence was sufficient he would sure vote for conviction, and that he distinctly said that he would vote to convict if the evidence was strong enough, and in this he is corroborated by the statement he made in the jury room in the presence of Mr. Webb.

Twenty-first: For the reason that the testimony of Franklin is false with relation to the money that he drew from the bank. The bank teller testifies that he paid Franklin \$500 in paper money, and that, to the very best of his recollection and to the best of his knowledge, he gave the man large bills, either fifties or hundreds and not twenties, and admitted that on the former trial that he testified that he knew that he did not give him twenties, but paid him in fifties or hundreds. Mrs. Bain testifies that, on offering to pay for the Examiner, Franklin offered a large bill, either a hundred or a fifty, which she could not change, thus corroborating the bank teller. Bain testifies that the money received from Franklin was just \$400, there being twenty twenties and no fifties or hundreds. Manifestly this was not the money that Franklin received from the bank teller upon his personal check after having made the deposit of the \$1,000. It was money from some other source.

(Here the jury was duly admonished, and recess taken until 1:30 o'clock this afternoon.)

AFTERNOON SESSION, 1:30 P. M.

THE COURT. You may proceed with your argument, Judge Powers.

MR. POWERS. Twenty-second: For the reason that Franklin is a member of the knot-hole brigade and is contradicted by the state's witness and Detective Sam Browne. Franklin testifies that just before he was arrested Darrow appeared on the street and said in substance, "They are onto you, Bert." Sam Browne testifies that he saw Darrow coming across the street, that he stepped between him and Franklin and that there was no conversation, and had there been any he would have heard it. Franklin testifies that Mr. Darrow was informed by Sam Browne by telephone to notify Franklin that he was about to be arrested, and hence Mr. Darrow was upon the street. Sam Browne testifies that he never did anything of the kind and it is not likely or probable in his position, honorable man that he is, that he would do so.

Twenty-three: For the reason that when an innocent construction can be given to testimony the jury must give it that construction. Mr. Darrow testifies that he was on the street in response to a telephone to go to the Socialist headquarters. C. O. Hawley testifies that he telephoned Mr. Darrow that morning at about 9 o'clock to go to the Socialist headquarters. Thus the fact that Mr. Darrow was upon the street is fully explained. Nothing criminal can be drawn from the incident, and another prop is drawn from the case for the state.

Twenty-four: For the reason that it has been proven by leading citizens of Chicago, in large numbers, that Mr. Darrow is a man of the very highest character; that he has the confidence and respect of all who know him, and it is not probable that such a man would be guilty of committing the offense with which he is charged.

Twenty-five: For the reason that good character in and of itself being a fact in the case, is sufficient to establish a reasonable doubt. This is apparent in our everyday life. We hear that some man is charged with crime and we immediately say it is impossible, for we know his character; we hear that another man is charged with crime and we believe it, because he has a bad reputation in the community. Mr. Darrow's character as proved shows him to be a man above reproach, and such a man cannot be convicted upon the wicked and malicious testimony introduced by the state.

Twenty-six: For the reason that Franklin is contradicted by Mrs. Robert Bain, by Robert Bain and by the bank teller concerning immediate facts relating to the alleged bribery of Bain. He is contradicted by Samuel Browne, the state's detective, and witnesses for the prosecution, upon vital points connected with his arrest on the morning of November 28th. He is contradicted by I. H. Russell, Job Harriman, Mr. Wolfe and Mr. Darrow upon the point that he was at Mr. Darrow's office, as he claims, on the morning of November 28th. He is contradicted by Leonard Shober, who tells of his mysterious visit at 7 o'clock in the morning to Mr. Darrow's office and who is corroborated by Colonel Tom Johnson. He is contradicted by C. O. Hawley and by Mr. Darrow as to the purpose for which Mr. Darrow was in the vicinity of where Franklin was arrested. He is contradicted by Le Compte Davis, as high-minded and as truthful a man as resides in Los Angeles, thus being directly contradicted by eleven witnesses, all of good repute. Being thus contradicted, how can you give credence to his story and convict Mr. Darrow?

Twenty-seven: For the reason that the defendant's witness, Frank E. Wolfe, is reputable and a truthful man, and the testimony that he gives utterly destroys the testimony of Franklin as to what took place

on the morning of November 28th, and completely wipes out the proof of the prosecution tending in any way to convict Mr. Darrow of the offense charged. If Mr. Wolfe tells the truth, and it must be conceded that he does—he has no interest to falsify—then Franklin tells a falsehood and the case for the state falls to the ground.

Twenty-eight: For the reason that Franklin is flatly contradicted by Mr. Darrow. It is true Mr. Darrow is the defendant and his interest as defendant may be said to bear upon the weight of his testimony, but he has no greater incentive to falsehood than has Franklin, who is testifying for immunity to save himself from the penitentiary. Besides, Mr. Darrow is a man of high character. Sam Browne says that Franklin is a man of no character—"Drunk all the time." Under those circumstances, if there was no other testimony than that of Mr. Darrow no honest man would say that the state had proved its case beyond a reasonable doubt.

Twenty-nine: For the reason that the facts concerning the Lockwood case, which was once tried and a verdict of "Not Guilty" found, are so intimately interwoven with the facts and circumstances of the Bain case that, having established beyond a reasonable doubt in this case that there is no foundation for the charge of bribery of Lockwood, the case of the state falls to the ground, and this prosecution is shown to be persecution.

Thirty: For the reason that there was no object in Mr. Darrow bribing Lockwood or giving Franklin \$4,000 on the morning of November 28th, or prior to that time, as shown by the overwhelming proof in this case. It had been agreed that the McNamaras should plead guilty. There was no motive, therefore, in bribing a juror. This being established, the case of the state falls to the ground.

Thirty-one: For the reason that the testimony of Franklin as to the manner in which Mr. Darrow suggested the purchase of the juror Bain, and the manner in which he proceeded, as Franklin states, to carry out his suggestion is that of a coarse and illiterate man, of the illiteracy and standing of Franklin himself. It is not such a course as would have been pursued by a man of Mr. Darrow's intelligence and standing, and is entirely and utterly improbable.

Thirty-two: For the reason that there was nothing unusual in giving Franklin the check for \$1,000 on October 4th, the true date, because no amount had been agreed upon for Franklin's services. He had a large number of men in his employ, and the amounts paid to him in September and October equaled exactly \$2,000 per month. It also appears from the testimony that at that very time he was asking for a large sum of money towards his compensation, as the investigation of the jurors was about completed.

Thirty-three: For the reason that we have established by reputable witnesses that Job Harriman was not at Mr. Darrow's office on the morning of November 28th; that he went to the bank and to the safety deposit vault that morning at 8:30 and got \$500 with which to pay a note, took that to his own office, handed it to Mr. Russell, went back to his headquarters and was there at 9 o'clock, and was engaged in conversation with Mr. Hawley and awaited the coming of Mr. Darrow in response to Hawley's telephone; and in fact, we have demonstrated that the story of Franklin is absolutely false, and Mr. Harriman is further corroborated by C. O. Hawley, who saw him come from the bank at about 8:30, and by the bank clerk, who swears he was there.

Thirty-four: For the reason that Franklin is contradicted by his own wife. Franklin states that he was at Darrow's office fourteen or fifteen minutes of 9 o'clock. Mrs. Franklin testifies that a few minutes past nine o'clock Mr. Darrow telephoned to her inquiring where he

could find Franklin. If Franklin's story is true and Darrow knew that the money was to pass upon the streets of Los Angeles that morning and knew the point, as Franklin states, he would not have telephoned a few minutes after nine. Besides, as shown, at nine o'clock he was on his way to the Socialist headquarters.

Thirty-five: For the reason that it is shown by the witness French, of the Safety Deposit Company, that Mr. Harriman was there, as he testifies, about half past eight o'clock, November 28th, thus corroborating Mr. Harriman, corroborating Russell and showing that Mr. Darrow did not telephone to Mr. Harriman and that Mr. Harriman did not come to Darrow's office with the \$4,000, as falsely claimed by the man Franklin.

Thirty-six: For the reason that the testimony of Franklin that Mr. Harriman came into Mr. Darrow's office with a dark coat on his left arm, that Mr. Darrow and Mr. Harriman retired to another room and Mr. Darrow returning, handed to Franklin \$4,000 in currency has been demonstrated to be absolutely false. Even the description of Mr. Harriman is shown to be false, for Mr. Harriman testifies he has not owned a dark overcoat for eight years.

Thirty-seven: For the reason that the testimony of Mr. Harriman and Mr. Russell as to the incidents of the morning of November 28th is fully corroborated by the bank book of Mr. Harriman, which has been offered in evidence, and the check which Russell drew and the note from the bank which Mr. Harriman paid. Their testimony must be accepted as true, and being true, Mr. Darrow must be found not guilty.

Thirty-eight: For the reason that the proof shows beyond question that Mr. Wolfe was with Mr. Darrow from the time Mr. Darrow took the street car to come down until he received the telephone call from Mr. Hawley to go to the Socialist headquarters, at about nine a. m. It is shown by Mr. Wolfe that immediately after the telephone call Mr. Darrow started; and it is proved by Job Harriman and by French that Mr. Harriman was at the deposit box at about 8:30 and was with Russell until nearly 9 o'clock and that at 9 o'clock it is shown by Hawley, he was at the Socialist headquarters. This absolutely disputes Franklin and establishes beyond a reasonable doubt that Mr. Darrow was not guilty.

Thirty-nine: For the reason that the man with Franklin on the morning of November 28th at ten or fifteen minutes of seven, as testified by Shober, was described by Franklin to Johnson, his own attorney, in these words: "He was a small, sallow-complexioned man, a dark man." This description by Franklin to Johnson is almost identical with the description of Shober, and that admission to Johnson corroborates Shober, and shows beyond all question that there is something not disclosed by the proof in this case and that Franklin was in a plot to "get" Mr. Darrow, as stated.

Forty: For the reason that the conduct of Franklin when he was arrested was not that of a man suddenly discovered when about to perpetrate a crime. Detective Browne said, "Bert, I want you." "What for?" replied Franklin. Browne said, "You have been an officer long enough to know what I want you for. You know what you have been doing." And Browne testifies that thereupon Franklin "smiled." A man suddenly discovered in the perpetration of a crime would not have smiled as did Franklin. This indicates that the whole matter, to use the words of the street, was a "frame-up."

Forty-one: For the reason that the story told by the witnesses for the state is exceedingly improbable. It is improbable that Mr. Darrow would give a check, as claimed, for the bribery of Bain instead of giving money. It is improbable that he would misdate the check as

the prosecution claims. It is improbable that he would give any paper that could be readily traced in the event of discovery. It is improbable that money would have been paid to Bain by Franklin if Franklin had been in earnest in an effort to bribe Bain, for Bain protested, even when the money was paid, that he would vote for conviction if the evidence was strong enough. Again it is improbable that Mr. Darrow would have displayed the money on the porch, "like a buffoon," as testified by Harrington; and it is improbable that the public place for the bribery of Lockwood would have been selected if the defense of the McNamaras was really seeking to bribe jurors. It is improbable that a man of the standing and ability of Mr. Darrow would have engaged in such a foolish plot as the witnesses for the state testify, and it is improbable that he would have engaged in the bribery of Lockwood when he had already determined to have the McNamaras plead guilty.

Forty-two: For the reason that the conduct of Franklin, as testified to by himself when upon his bribery expeditions, was not the conduct of a man who was secretly endeavoring to purchase another. It was the conduct of one who desires his actions to be known. He might as well have traveled with a brass band and proclaimed his mission from the housetops as to proceed as he did. At all times he traveled in an automobile; he selected public places for his schemes; he did nothing to conceal and did everything to call attention to his conduct; which is not the conduct of a man who was engaged, as he says he was, under the direction of Mr. Darrow, to purchase a juror.

Forty-three: For the reason that Franklin, talking like a magpie to any one who would listen, over and over again exonerated Mr. Darrow, and by those statements has established the absolute falsity of the story that he told upon the stand. This man Franklin is impeached by more than thirty truthful witnesses.

Forty-four: For the reason that no jury in America has ever convicted a man of Darrow's standing and proved character on the testimony of one like Franklin, who is contradicted upon every important point by disinterested witnesses, and whose story is highly improbable and who is testifying now for immunity and who declared, before the trial, in speaking of the charges against him, that he would "slip it on to someone else."

Forty-five: For the reason that to convict on such evidence as the state has introduced would be a miscarriage of justice. It would be an outrage upon our system of trials. The defendant is presumed to be innocent until proved guilty beyond a reasonable doubt, and as the case now stands, there is nothing left upon which to found a well-grounded suspicion that Mr. Darrow is guilty. He ought to be acquitted by the jury without leaving the box.

Forty-six: For the reason that instead of the people proving Mr. Darrow guilty beyond a reasonable doubt, the defense has established beyond a reasonable doubt that the story as told by the witnesses for the prosecution is absolutely false; that Mr. Darrow was not connected with the crime alleged and that there is not a reasonable show of proof to justify the prosecution.

Forty-seven: For the reason that the prosecution should have been satisfied with trying this case once. When they tried the Lockwood case they introduced in evidence everything that has been introduced in evidence in this case. There was, at that time, when the Lockwood case was concluded, no just cause for the prosecution of Mr. Darrow, and the facts and circumstances developed here show that this is not a case of prosecution, but it is a case of persecution.

Forty-eight: For the reason that when you compare the witnesses, in numbers, in character, in appearance on the stand, and in the man-

ner of testifying, for the defense with the witnesses for the prosecution it will be found that those introduced by the prosecution are part of them testifying for immunity, and all of them testifying under some pressure, while the witnesses for the defense are found to be the witnesses worthy of belief, and the story of the defense is found to be the story that is sustained by the unimpeachable truth.

Forty-nine: For the reason that the proof on the part of the state consists of the testimony of traitors, detectives, spies, informers, immunity-seekers and self-confessed criminals; and even a dog should not be convicted on such evidence, let alone a high-minded man of the unimpeachable character of Mr. Darrow.

Fifty: For the reason that Mr. Darrow, when he called the character witnesses in Chicago, put his character in issue, and the prosecution had a right to attack it if it could. It has raked and scraped the country for incriminating evidence, the testimony of spies, informers, detectives and self-confessed criminals. His character stands unimpeached and unimpeachable.

Fifty-one: For the reason that it is unbelievable that a man who prior to the McNamara case is vouched for by friend and foe, by bankers, priests, attorneys, judges and business men as a man of the highest integrity, would suddenly become a criminal and wallow in the mud of crime, as the spies, detectives, informers, immunity seekers, traitors and self-confessed criminals (who compose the nauseating collection of witnesses for the prosecution) declare.

Fifty-two: For the reason that Franklin's statement that Mr. Darrow telephoned to a safety deposit company on the evening of November 27th and reported it closed is shown to be false, as Mr. Darrow never had a safety deposit box in Los Angeles. This is important, for it being shown that Franklin falsified on this important matter no reliance can be placed on his story.

Fifty-three: For the reason that it is proved by Mr. Davis that the instructions given Behm and Hammerstrom relative to Diekelman and McManigal were not such as the forked-tongued Harrington stated and shows nothing reflecting on Mr. Darrow.

Fifty-four: For the reason that with the proof as it stands, that even if Mr. Darrow was on trial in Mexico and had to prove himself not guilty he would not be convicted even in that barbarous country of any offense whatsoever.

Fifty-five: For the reason that Franklin is contradicted in his statement that he never talked with Harrington more than two or three times, by Mrs. Hartenstein, Miss Kernoghan, Mr. Russell, Mr. Wolfe, Shober, Belding and others. This is important, for from his testimony it was manifest that Franklin was endeavoring to conceal his intimate relations with Harrington.

Fifty-six: For the reason that the witness Biddinger disclosed in his testimony that Detective Burns had at least two or three spies working in the offices of Mr. Darrow, and all the circumstances indicate that these two traitors to the defense were the intellectual Siamese Twins, Franklin and Harrington. Those are the two men towards whom all the circumstances point.

Fifty-seven: For the reason that a man who will sleep under a man's roof, eat at his table and accept his bounty and then lay a trap for him, as did Harrington, would sell out to the enemy, and a man of the known character of Franklin would not hesitate to do likewise, and the National Erectors' Association, that was powerful enough to inject itself into the prosecution and lay down the terms of settlement of the McNamara case and that injected itself into this case, would not hesitate to put up \$4,000 or any other sum needed, in order to ruin the defense and blacken Mr. Darrow.

Fifty-eight: For the reason that the proof shows that there was a conspiracy to blacken and destroy Mr. Darrow and the defense. On the morning of November 28th at fifteen minutes to seven, Franklin had a secret conference with a stranger, described by Shober as sallow, dark, and of about 130 pounds weight. This man Franklin described to Johnson and he told Hood that the man was within thirty feet of him when he was arrested. He told Mr. Davis and Mr. Darrow of the stranger—denied Mr. Darrow ever furnished the money, told Mr. Watt that there was money around that the lawyers knew nothing about, hinted to Mr. Warner that there was a mysterious angle to the case, said to Mr. Stineman that a Frisco man furnished the money and that it came from outside parties. He was intimate with Harrington, though he now denies it, and Biddinger says Burns had two men and possibly three working in the offices for the defense. When arrested he showed no surprise but “smiled.” Was ever a conspiracy more clearly proved?

Fifty-nine: For the reason that when you calmly consider the testimony showing a frame-up, no man who is honest and fair can say upon his conscience that the prosecution has proved its case beyond a reasonable doubt, and the verdict must be not guilty.

Sixty: For the reason that if you strike out all the testimony for the defense, no man can say that Franklin, a member of the knot-hole brigade and a self-confessed criminal, has been corroborated as the law requires and as the court will charge you. The Bains cannot furnish the required corroboration, as they do not testify to any knowledge connecting Darrow. There is nothing that tends to prove that Mr. Darrow bribed the juror Robert Bain outside the testimony of Franklin, and the verdict must be not guilty.

Sixty-one: For the reason that the witness Leonard Shober is corroborated by the testimony of Mrs. Franklin. According to her testimony she left her house that morning shortly after eight, as she arrived at her husband's office by 8:30 a. m. She says Franklin left his home before she did and she cannot state how long he had been gone from home before she left. When she got to the office at 8:30 he was not there. She doesn't know where he was. The conclusion is inevitable that he left home very early and met the sallow-complexioned man, as Shober states.

Sixty-two: For the reason that although the traitor Harrington lured Mr. Darrow several times into a room at the Hayward hotel, where a dictagraph was planted to entrap him and induce him to make incriminating statements, it is manifest that he made none, or they would have been proved, and this is powerful evidence for the defendant, for at that time, he had confidence in Harrington, and if guilty some words showing it would have been secured.

Sixty-three: For the reason that if Mr. Darrow had known that Franklin had purchased the juror Bain, as Franklin testifies, it would not have been necessary for Franklin to go to Le Compte Davis about two days before the peremptories and ask him, as well as I. H. Russell, to use influence with Mr. Darrow to induce him to keep Bain on the jury. The fact that he did so shows that his story that Mr. Darrow directed him to bribe Bain and knew that it had been done is false.

Sixty-four: For the reason that when you compare Mr. Darrow's testimony—corroborated on each point as it is and contradicted in no vital particular by any reputable witness—with the testimony of Franklin, which is contradicted by the testimony of more than thirty unimpeached witnesses, and which is corroborated by no witness of credit, it is impossible to conceive that you will find a verdict of guilty.

Sixty-five: For the reason that Franklin showed a nervous anxiety on the witness stand to serve the District Attorney and to injure Mr. Darrow all he could. He volunteered testimony. He purposely dis-

obeyed the admonitions of the court. He was manifestly partisan and unfair and his word should not be given credence.

Sixty-six: For the reason that not only does the law require that the testimony of a spy be corroborated, but human nature itself has no use for a spy or turncoat, and I say that seriously, notwithstanding the argument that was made here yesterday by Judge Gray, there is no one who looks with any feeling of satisfaction upon another who is a traitor and who is a turncoat. We may accept their testimony when we are compelled to; but we don't want to associate with them. We don't want to have anything to do with them. There is a natural feeling in the human heart that causes us to be prejudiced against men of that kind. The proof in this case for the people is not of a character to commend it to honest men.

Sixty-seven: For the reason that no one has been prosecuted but Mr. Darrow—let all others go, but "Get Darrow" has been the war cry of the prosecution. That is not the feeling of the great State of California, and it should be rebuked by a verdict of not guilty.

Sixty-eight: For the reason that Frank Wolfe testifies that he was at his office at about 8:35 a. m., November 28th, 1911, went into Mr. Darrow's room and remained there talking until a minute or two before nine, when Mr. Darrow received a telephone call and said he was going to Socialist headquarters and immediately left, going down the corridor toward the elevator. Franklin says he was there for the money fourteen or fifteen minutes of nine. Which will you believe, Franklin or Wolfe? It is manifest that Wolfe tells the truth, and it ends the case for the prosecution.

Sixty-nine: For the reason that suspicion is not proof and the desire to "Get Darrow" is no ground for a verdict of guilty, and the testimony of an uncorroborated self-confessed accomplice is not enough to convict a man. Yet this is the kind of case the state has made, and the verdict should be not guilty.

Seventy: For the reason that encouragement should not be given by a jury to the prosecution of a man twice for the same thing, and that is exactly the case here, although technically the charge is not the same as on the other trial. Under the circumstances the verdict should be not guilty.

Seventy-one: For the reason that not only has District Attorney Fredericks been a good friend to Franklin, as he testifies, but he employed Franklin to work for him on a private matter since the arrest. Can it be possible that if the District Attorney of this county really believed that Franklin had been guilty of bribery, under the direction of Mr. Darrow, that he would employ him either in a public or private capacity? The fact that he did employ him throws discredit upon the case of the prosecution and indicates strongly that the whole thing is a "frame-up."

Seventy-two: For the reason that it appears that the defense was paying Franklin about \$2,000 per month for his men and his expenses in investigating the jury list. Franklin received \$500 September 5th, \$250 September 11th, \$250 September 15th, \$500 September 21, and \$500 September 30—total, \$2,000. He received \$1,000 October 4th, \$500 October 16, and \$500 October 28th—total, \$2,000; the same as in September. Franklin testified that the bargain was that whenever money was needed for expenses of his employes he was to go to Mr. Darrow, which he did, and from Mr. Darrow received the money needed, so there is nothing unusual or mysterious about the \$1,000 check of October 4th, and no wrong inference can be drawn therefrom, as when the \$1,000 was paid Franklin had only \$109.10 in the bank.

Seventy-three: For the reason that the facts concerning the issuance of the \$1,000 check can all be reconciled on the hypothesis of

innocence, and such being the case it is your duty to so reconcile the testimony, which leaves the state without any circumstantial evidence whatsoever to corroborate Franklin, and the verdict must be not guilty.

Seventy-four: For the reason that it has been proved by the admissions of the prosecution's own witness Franklin that he was told that if any local attorney or man was implicated in the bribery claimed that he need not give his name, and he also stated that the District Attorney did not want him, Darrow was the one wanted. A prosecution so unfair cannot commend itself to honest men, and it adds another reason for a verdict of not guilty.

Seventy-four: For the reason that where one man is hunted and followed while others go free, and there creeps out in the evidence proof, that using the state as an instrument for revenge, a powerful Eastern corporation seeks a man's liberty, a verdict of not guilty should be rendered as a rebuke to such prostitution of law and justice.

Seventy-five: For the reason that Le Compte Davis has testified that on the evening of Monday, November 27th, 1911, Mr. Darrow said to him: "Tomorrow morning I want you to take up the matter with Captain Fredericks and arrange for entering a plea of guilty in that matter. If Mr. Chandler sees Captain Fredericks before that and he consents to let J. J. go free, all right. If he doesn't, you enter into an agreement with him to enter a plea of guilty and take the term as suggested by Captain Fredericks." And if Mr. Davis tells the truth this ends the case, for it shows no motive for bribing a juror on the morning of November 28th, and if Franklin has falsified in this regard his testimony is of no value in any other regard.

Digressing for a moment: Let us assume that Davis is contradicted by Captain Fredericks as to having conversation that he testified to. That does not prove that Mr. Davis has falsified. Human memory is not infallible. Conversations men often forget. The time that certain conversations are held pass from the memory. It does not prove that either man has intentionally testified falsely here. But I submit that Mr. Davis is just as worthy of belief as Captain Fredericks. They both stand here, prominent citizens of Los Angeles, neither one of them impeached in any material matter, and their testimony is before you for consideration. When a case is in that state, where looking at it from one standpoint, from the standpoint of the testimony of Mr. Davis, it appears beyond all question the verdict must be not guilty; and looking at it from another standpoint, from the standpoint of Captain Fredericks, it would seem that, taking his testimony, the verdict returned must be guilty. There exists a condition in which there is at least a reasonable doubt for the case has not been proved by the state. And that is exactly the situation of the case. When we consider the testimony of Mr. Davis and Captain Fredericks and do not consider any of the rest of the testimony in the case. I direct your attention to this because I feel it will be an aid to you in honestly considering the testimony and arriving as to what is the truth. You are to be guided by the charge of the court, and His Honor will tell you that the case must be proved beyond a reasonable doubt. And when you find two men of their character and standing, relying upon their memories, contradicting each other in some respects, it is a state of a case where no man can say that the prosecution has proved its case as it must be proved. So, when we find Mr. Davis testifies definitely what Mr. Darrow said on the night of the 27th we learn what was the condition of Mr. Darrow's mind. I do not care what further communications were had. I do not care whether Mr. Davis made any communication with Captain Fredericks. I do not care if you believe, as Captain Fredericks intimates, that no agreement had been reached at that time. It is manifest from this statement of Davis that at that time Mr. Darrow believed

that an agreement had been reached. At any rate, he directed Mr. Davis to go to Captain Fredericks and accept Captain Fredericks' terms. He had, therefore, concluded to take the terms of the prosecution, whatever they might be; and being in that frame of mind he would not be preparing that night to carry out the conspiracy that Franklin testified to as having occurred on the next morning for the bribery of Lockwood. There would be no necessity for it. It would be, at any rate, to say nothing else, a waste of money. And it is apparent that Mr. Darrow was not wasting the money, for he telegraphed to Indianapolis that they might use \$1,000 to secure testimony, and then when he found that original agreement could be carried through he immediately telegraphed to them not to use the money. Do you believe that on the morning of the 28th, having on the night before determined in his mind to take the terms of the prosecution, that he would have been handing this man Franklin the money he testified to to engage in the plot that has been produced here by the state? No; if Mr. Davis tells the truth as to what Darrow said that night it is an end to this case.

Seventy-six: For the reason that a few days prior to the time the peremptory challenges were to be exercised in the McNamara case, Franklin met Le Compte Davis and told him that Mr. Darrow was not satisfied with Bain as a juror, but that he (Franklin) was satisfied that Bain's sympathies were all with the defense, and said Franklin, "If you give heed to me you will keep him," whereupon Mr. Davis agreed to speak to Mr. Darrow. If Bain had been bribed and Mr. Darrow informed, as Franklin swears, Mr. Darrow would not have made objection.

Seventy-seven: For the reason that after the foregoing conversation, Mr. Davis saw Mr. Darrow and the matter was discussed, and Franklin was instructed to investigate Bain further, particularly among the members of a drum corps to which he belonged, and later Franklin reported to Davis that he had done so and that Bain was all right, saying: "You can depend upon him, his sympathies are all with labor unions, and he is an honest man." This proves that if there was any bribery, Darrow was unaware of it.

Seventy-eight: For the reason that it is thus manifest that the Bain bribery was committed without the knowledge of Mr. Darrow. That, having carried out so much of the plot and having paid \$400 in money, Franklin was nervously anxious to keep the man and thus satisfy those who had employed him to commit the crime and involve Mr. Darrow. It proves Darrow innocent, and it establishes a plot to undermine him. Hence the verdict must be not guilty.

Seventy-nine: For the reason that the \$1,000 check given on October 4th does not corroborate Franklin any way whatsoever. Franklin having testified that the first talk on bribery was October 6th when Mr. Darrow turned to his desk and wrote a check for \$1,000, whereupon he, Franklin went to the bank, deposited the check, drew \$500 and went to the Bain house. The check is dated October 4th. Mr. Darrow swears that was the true date, and he has shown by five other checks given by him to Franklin, that the latter frequently carried his checks a couple of days before making deposit. This disposes completely of any circumstantial or other evidence from the check corroborating Franklin, and on the contrary it contradicts him, and the case of the state falls to the ground.

Eightieth: For the reason that during a cross-examination extending for nearly two full days, during which time the Lockwood matter and all other collateral issues were thoroughly probed, the name of Bain was not mentioned until 11:55 on the conclusion of a day and a half of cross-examination, and then it was only mentioned incidentally. The cross-examination up to the time of the mention of Bain's name involved over three thousand questions and answers, and this startling

avoidance by the state of the question, "Did Clarence Darrow bribe Robert Bain?" proves that the attorneys for the state believe that so far as the Bain charge is concerned it is hopeless, and they are striving to convict Mr. Darrow upon general principles, and failing in that, to blacken and besmirch him and thereby win at least the plaudits of the National Erectors' Association.

DARROW NOT BEING TRIED ON THE BAIN CHARGE.

I have taken from the record that which was said by Mr. Bain on cross-examination, after a day and a half by Mr. Ford. The question was: "Sometime after the first of December another warrant was issued upon the Bain charge and the preliminary examination upon that took place somewhere about the 17th or 18th of December—that is your recollection, isn't it? A. That is about as I remember it, Mr. Ford."

Think of charging a man with bribing Robert Bain, and upon cross-examining him a day and a half, never mentioning the name of the man that he is charging with bribing! Think of it—calling twelve men to determine the question as to whether or not Clarence Darrow bribed Robert Bain, or attempted to bribe him, on the 6th day of November, 1911, and spending all your time, and the time of this court, in trying collateral matters. Why didn't the learned counsel for the prosecution cross-examine in regard to the Bain charge? He is too able a lawyer; he is too shrewd a cross-examiner; he is a man who knows what he wants, and who appreciates when he has a weak case. He had reasons for avoiding the name of Robert Bain. He has read the indictment; he knows what it contains. He knows Darrow is not charged with buying Biddinger, or with buying Diekelman, or with buying Lockwood, nor reaching out for Yonkins, nor with interfering with Schmidt. He knows he is charged with bribing Robert Bain; and yet during three thousand questions, he once mentioned the name of Bain, and as I have shown you, that was incidental. That calls for an explanation from the other side; for I must say in all my experience at the bar—and unfortunately, like some of the rest of you, I am getting along where I can see the sun going down in the west, and I have had some experience in the courts—I never knew of a shrewd lawyer so carefully avoiding the charge as in this case. That is why I have iterated and reiterated the charge to you; so that you will not forget it—so that you will remember that you are here to try Mr. Darrow concerning his relations with Mr. Robert Bain. You are not here to try him because he has "a thick forehead;" you are not here to try him because he has "fox-like eyes;" you are not here to try him because he is "a hardened criminal;" you are not here to try him because he is "a moral idiot," as suggested by Judge Gray; you are here to try him on the charge with which he is charged—and that is the Bain charge. And they ought to discuss that charge a little before the jury. I defy the attorney for the prosecution, when he concludes this case, to show any legitimate evidence that corroborates Franklin's with regard to the Bain charge. He may wander off into the fields, and he may gather up these collateral witnesses once more, and detail to you what they have said. But he cannot find, and he cannot produce to you anywhere from the sworn testimony anything that corroborates Franklin as the law says he must be corroborated.

That is a bold statement I make, but I make it knowing what it implies. I know that I stand here presenting a case that is absolutely impregnable. I know that I am discussing a case where all the proof shows that my client is not guilty. And so I defy counsel, shrewd though they are, able though they are, experienced though they are, to show you the evidence that is necessary before you can convict this man.

STRONG WITNESSES FOR THE DEFENDANT.

Now, I have wearied you long enough, and I have taken fully as much time as I should; therefore, I shall not go into the details concerning the negotiations that have been testified to by Lincoln Steffens, and by Le Compte Davis and Mr. Darrow, that led up to the agreement to have the McNamaras plead guilty. I will simply say this to you: Some men may not like Lincoln Steffens, but he is a national character, and he comes not here to falsify. He has no interest to falsify. The District Attorney may hold him in contempt; and yet, you know as reading men that he has done a great work in this country. All that has been disclosed here concerning him has been that in the interest of peace and of bringing warring factions together, he attempted to aid in saving the lives of these men and disposing of that case that was then on trial without the necessity of taking human life.

Of Le Compte Davis I have already referred to. Many of you undoubtedly know him personally. There is another witness whose testimony though brief was important; and that is Governor Gage, once governor of this great state, and once minister to Portugal. The witnesses we have introduced have not all followed the business of detectives and the settlement of claims against railroad companies. They are known, and are of good standing, and they have the confidence of their neighbors. Governor Gage is a strong man; his appearance indicates it. An honest man, and a truthful man, and a fearless man. His testimony is important, because the effort has been made to link Mr. Darrow and Franklin at every point. Strenuously they sought to show that he engaged Governor Gage; strenuously they endeavored to show that he was present at consultations in Governor Gage's office, and met Mrs. Franklin there. Nothing would have been wrong in it, had he done so; but the inference was sought to be drawn that Mr. Darrow was nervously doing all he could in order to keep Franklin from talking. But Governor Gage denied that he was employed by Mr. Darrow. He was employed, he says, by Mr. Davis. He says that he never saw Mrs. Franklin at his office. His testimony indicates they are unable to connect Darrow in that particular, and it disposes of another prop of the prosecution.

HARRINGTON AND HIS CONDUCT ONCE MORE.

And now, as I come towards the end of this case, I want to draw your attention to one point touched upon but that I have not elaborated as I desire. I shall take a few moments time for that purpose. When the man Harrington was upon the witness stand I cross-examined him. I asked him whether he was a friend of Mr. Darrow. He said he had been friendly, but not a friend; that he never had any social relations with him; that his relations were of a business character; that it is true that he went to Darrow's house when he came back from Albuquerque, but he said that he went there on Darrow's invitation that he might consult him concerning his testimony before the grand jury. And he said, "I didn't testify to that before because I was not asked the question."

Now, Mrs. Darrow testified that when that man came back from Albuquerque and went to the Darrow house with his satchel in his hand, he said to Mrs. Darrow, "I am back here again. I feel awful bad that I cannot spend Christmas in Chicago with my family, but I feel that I am exceedingly fortunate that I have this place to come to." And the doors were thrown open to him, as they had been theretofore. Mrs. Darrow says that before that time he had been free to come to their table whenever he desired, and that he came frequently. He walked in there upon his return from Albuquerque when he was subpoenaed to go before the grand jury, as a friend, and he was received as a friend; not

only in a friendly manner, but in a social manner; and he was given his room. And then, night after night, while he lived there—and he lived there until they were compelled to remove from the house—he sat there by the fireside with the wife and talked to her. There is a picture that shows the extreme confidence that the Darrows had in that man. There is a picture that shows that anyone that had any sort of conscience would feel that he could not go forth from that household, where he had visited with that wife, and blacken the character of the husband.

When that man testified, it seemed to me as if the father of all evil had spread his black pinions in the court room and whispered into Harrington's ears the festering lies that dripped from his tongue. I say that, because the man that will worm himself into the confidence of a man's wife, that will worm himself into the confidence of a family, who will warm himself by the fireside, and all the time be carrying tales to the United States District Attorney, everything that he could hear and imagine, is a man so low that even the District Attorney does not like him any better than I do. What would you think, and what would I think of that kind of a man—and he was not satisfied with being a tale bearer, but must go and have the trap laid, the dictograph ready, and lure the friend in there. Why, I would feel that man that would do toward me what Harrington did to Darrow had forfeited his life to me. And then talk about Darrow being a criminal; talk about Darrow being a man having a criminal mind, when he has withheld his hand from the throat of that vile creature! I denounce him thus, because he ought to be denounced; he ought not to be lashed alone by the tongue but he ought to be horse-whipped by the women of Los Angeles, lest there shall sometime come and sit by their fireplaces a man of this nature, who plotting against their husbands to destroy the happiness of their homes, while sleeping under their roof and breaking their bread. Are you going to convict a man on the testimony of such a man? And you cannot convict this defendant without that man's testimony. Are you going to send a man to the penitentiary on the testimony of such a man? Why, you talk about bribing jurors—it is a misdemeanor compared with that which this man Harrington has done. Talk about placing such a man as that upon a pedestal and delivering a eulogy upon him, such as we heard yesterday from the lips of Judge Gray. Such a man as that is worthy of contempt, and cannot be believed.

Take that man and compare him with the defendant here, and which will you believe? Compared with that wife, which would you believe? Which appears to be the most truthful? And you have got to believe him in order to convict Darrow. It would be an awful thing to convict a man under those circumstances and put a premium upon such conduct; for no man's home would be safe then. There ought to be a law that would prevent any man from laying this infernal trap of a dictograph and luring a man there to talk; from going into a man's home and doing what this man did. And that man Harrington is a sample of the witnesses for the prosecution. This defendant who sits here can no more be compared with him than daylight with darkness.

CONCLUSION.

Clarence Darrow is a great man—great in this: He has turned from the dross and from the dregs of earth and he has fought and he has striven for humanity. He turned from the strife for wealth, from the marts of trade, from the palaces of Mammon, and he attuned his ear to the cry of the distressed, to the cry of the weak, to the cry of the oppressed; and all his life he has tried to make their burdens less grievous to bear.

He belongs to that army of noble souls that in all the ages have blazed the way for liberty and for human freedom. They are the men and women who have refused to bow to tyrants' caps, who have struck the shackles from slaves, and who, while clearing the way for progress, have gathered the spears of the oppressor into their bosoms and died with smiles upon their lips. Always in advance, always in the vanguard they have been misunderstood while living and almost deified by succeeding generations. With his great ability, had Clarence Darrow chosen to serve Mammon, he could have reveled in riches and been crowned with honors—but his great heart has throbbed response to every cry of distress, and he has served humanity, and so he stands here alone, fighting the cruel hosts of evil, with no complaint, misunderstood and wickedly assailed, yet confident that in the good providence of God, the day will come when he will be no longer reviled.

He has traveled a long way and it has been a weary way, filled with thorns and brambles, and he has followed with patience rare and with fidelity great. In the concluding paragraph of "Farmington," an idyll of boyhood which he wrote, he has said:

"All my life I have been planning and hoping and thinking and dreaming and loitering and waiting. All my life I have been getting ready to begin to do something worth while. I have been waiting for the summer and waiting for the fall. I have been waiting for the winter and waiting for the spring; waiting for the night and waiting for the morning; waiting and dawdling and dreaming, until the day is almost spent and the twilight close at hand."

And now he sits here, patient and courageous, with his great, strong face seamed by the passing years, looking, as ever, bravely toward the future, and waiting for your verdict.

Will you blight a life spent for you and for me and for our children and for the world by swinging wide the doors of the penitentiary and bidding him enter? Will you believe tongues festering with lies? Will you be led by hands dripping with crime? Will you be governed by testimony that is an abomination unto the Lord, and take from this man his honor, his good name and his liberty?

Or will you turn to the emissaries of evil who from day to day have coiled in the witness chair and spat their venom at the defendant, and say, "Get thee behind me, Satan, we find this man not guilty?"

For by so doing, the peace that passeth all understanding, the peace of God, will possess your souls!